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Attorneys for Plaintiffs

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

19 JULIE EWALD, TOM PARKIN, BRIAN
20 DEPPERSCHMIDT, KYLE WEBER and
21 BRANDON STEELE, Individually and on
Behalf of All Others Similarly Situated,

22 Plaintiffs,

23 vs.

24 QUALCOMM INCORPORATED, A
DELAWARE CORPORATION,

25 Defendant.

Case No. 5:17-cv-565

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF FEDERAL AND
STATE ANTITRUST LAWS, STATE
UNFAIR COMPETITION LAWS,
AND THE COMMON LAW OF
UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

1 Plaintiffs, by and through their undersigned attorneys, bring this proposed class action
2 and allege as follows:

3 **I. INTRODUCTION**

4 1. Plaintiffs and proposed class members are purchasers of cellular telephones
5 and other cellular devices, such as computer tablets. In each such device, there is a modem
6 chipset (also called a baseband processor), which allows the device to communicate and
7 transmit voice and data across wireless networks controlled by wireless carriers, such as
8 Verizon or Sprint. Plaintiffs bring this action against Defendant Qualcomm Incorporated
9 (“Qualcomm”) for its anticompetitive conduct in acquiring and maintaining monopolies over
10 the modem chipset market and the licensing market for “standard essential patents” or “SEPs”
11 related to that technology. As a result of Qualcomm’s anticompetitive conduct, described
12 below, Qualcomm has charged device manufacturers an excessive and unlawful royalty on the
13 net selling price of each cellular device, which in turn has inflated the price paid by each end-
14 user purchaser of such devices.

15 2. To communicate with an operator’s network, a cellular device must contain a
16 modem chipset that complies with cellular communications standards that the network
17 supports. Standard setting organizations (“SSOs”), comprised of device and device
18 component manufacturers as well as others, collaborate to set technology requirements
19 (“standards”) to ensure mass interoperability among all system components. Because a
20 standard requires that devices utilize a specific technology, standard-compliant devices will,
21 in some cases, infringe on certain patents for technology incorporated in the standard. Such
22 patents are the aforementioned SEPs. SEP holders benefit by obtaining licensing fees and
23 royalties associated with use of their technology. Given the power such standards may give
24 SEP holders, before selecting a standard, SSOs consider various alternative technologies, and
25 importantly, also require that the developers of these standards agree to license their
26 technology on fair, reasonable, and nondiscriminatory (“FRAND”) terms. This ensures that
27 competitors may use the technology rather than being excluded from the market, and device
28 manufacturers may use the technology without being subjected to unreasonable terms.

1 3. Qualcomm pioneered a technology known as Code Division Multiple Access
 2 (“CDMA”), which provided a means for cellular devices to communicate with their wireless
 3 networks. Qualcomm was, and continues to be, the dominant producer of CDMA-modem
 4 chipsets and also holds the largest number of SEPs for CDMA technology.

5 4. Qualcomm used its early leverage over CDMA technology to control the
 6 modem chipset supply (and SEPs related to that technology) to unlawfully acquire and
 7 maintain its monopolies over these markets. CDMA became the standard used by Verizon
 8 and Sprint, which directly stemmed from Qualcomm’s promise to SSOs that it would comply
 9 with FRAND requirements if the SSOs adopted Qualcomm’s CDMA technology as their
 10 standard, rather than basing the standard on other technologies that competed with CDMA.
 11 As a result, device manufacturers such as Apple Inc. (“Apple”) had to incorporate
 12 Qualcomm’s CDMA technology for its devices to communicate with Verizon and Sprint.
 13 Thus, having agreed to license its technology on FRAND terms, Qualcomm’s technology has
 14 been incorporated into virtually every relevant cellular standard in the last several years.
 15 Qualcomm has targeted a total “service addressable market” that it claims was worth \$23
 16 billion in 2015 and will be worth about \$100 billion in 2020.¹

17 5. Qualcomm, however, took unfair advantage of standard-setting process by
 18 taking and manipulating all of the benefits of that process while refusing to comply with the
 19 FRAND commitments it made to SSOs to induce them to select Qualcomm’s technologies for
 20 their standards. Among other things, Qualcomm (1) refused to license, or alternatively
 21 imposed onerous restrictions on licenses of, its SEPs to competing chipset makers; (2)
 22 conditioned the supply of its CDMA chipsets on agreeing to Qualcomm’s license agreements
 23 for its entire patent portfolio, including non-SEPs; (3) entered into exclusive deals with
 24 certain cellular device manufacturers, such as Apple; and (4) ignored the requirements of
 25 SSOs to license its SEPs to patent users on FRAND terms to extract unreasonably high,
 26 unilaterally determined royalty payments.

27
 28 ¹ Paige Tanner, *Qualcomm Is Targeting \$100 Billion Market By 2020*, Market Realist (Mar.
 16, 2016), <http://marketrealist.com/2016/03/qualcomm-targeting-100-billion-market-2020/>.

1 6. Plaintiffs and the class of persons they seek to represent have been harmed by
 2 paying suprareactive prices for the cellular devices they purchased. Qualcomm “parlayed
 3 its pioneering role in cellular technology into a patent-licensing business that generates most
 4 of its profits. Qualcomm charges a royalty on nearly every smartphone made, whether or not
 5 the device uses its chips.”² Qualcomm admits in its Form 10-Q filed on June 29, 2016 with
 6 the Securities & Exchange Commission (“SEC”) that “[r]oyalties are generally based upon a
 7 *percentage of the wholesale (i.e., licensee’s) selling price of complete licensed products*, net
 8 of certain permissible deductions (including transportation, insurance, packing costs and other
 9 items).” (Emphases added). Qualcomm typically charges cellular device manufacturers up to
 10 5% of their product’s wholesale price—around \$20 on a \$400 phone.

11 7. Qualcomm’s anticompetitive conduct has been investigated and met with
 12 condemnation by regulators around the world. On September 9, 2009, the Japanese Fair
 13 Trade Commission (“JFTC”) issued a cease and desist order against Qualcomm on the
 14 grounds that Qualcomm had violated its FRAND obligations. On February 10, 2015, the
 15 Chinese National Development & Reform Commission (“NDRC”) found that Qualcomm had
 16 abused its monopoly power and restricted competition in violation of the country’s Anti-
 17 Monopoly Law, fining Qualcomm \$975 million. On December 21, 2016, the Korea Fair
 18 Trade Commission (“KFTC”) fined Qualcomm \$854 million (the largest fine in its history)
 19 for abuse of market dominance and anticompetitive conduct with respect to its licensing
 20 practices.

21 8. Most recently, on January 17, 2017, the United States Federal Trade
 22 Commission (“FTC”) filed a civil suit against Qualcomm in this Court on January 17, 2017,
 23 challenging Qualcomm’s unlawful maintenance of a monopoly in baseband processors and
 24 alleging Qualcomm has excluded competitors and harmed competition—to the detriment of
 25 consumers who, as a result, paid increased prices for cellular devices. *See Federal Trade*
 26 *Commission v. Qualcomm Inc.*, Case No. 17-cv-220-LHK (N.D. Cal., filed Jan. 17, 2017).

27
 28 ² Don Clark, *Qualcomm’s Main Profit Driver is Under Pressure*, The Wall Street Journal
 (Apr. 13, 2015), <http://www.wsj.com/articles/qualcomms-main-profit-driver-is-under-pressure-1428967051>.

1 9. The FTC's action has also spurred Apple to file an antitrust, intellectual
 2 property, and contract suit against Qualcomm. *See Apple Inc. v. Qualcomm Inc.*, Case No.
 3 17-cv-0108-GPC/NLS (S.D. Cal., filed Jan. 20, 2017). In addition, Apple has commenced a
 4 \$145 million patent action against Qualcomm in a Chinese intellectual property court.³

5 10. Plaintiffs bring this action on behalf of themselves and others similarly situated
 6 to recover for their injuries resulting from Qualcomm's violations of Sections 2 and 3(b) of
 7 the Sherman Act, as well as violations of state antitrust and consumer protection laws.
 8 Plaintiffs seek monetary damages, injunctive relief, and any other available remedies to which
 9 they are entitled to as a result of Qualcomm's unlawful conduct.

10 **II. PARTIES**

11 **A. Plaintiffs**

12 11. Plaintiff Julie Ewald ("Ewald") is a resident of Las Vegas, Nevada. Ewald
 13 purchased an Apple iPhone 6 for personal use and not for resale.

14 12. Plaintiff Brandon Steele ("Steele") is a resident of Beckley, West Virginia.
 15 Steele purchased an Apple iPhone 6s, for personal use and not for resale.

16 13. Plaintiff Tom Parkin ("Parkin") is a resident of Dubuque, Iowa. Parkin
 17 purchased an iPhone 5c for personal use and not for resale.

18 14. Plaintiff Kyle Weber ("Weber") is a resident of Elm Grove, Wisconsin. Weber
 19 purchased an iPhone 6 for personal use and not for resale.

20 15. Plaintiff Brian Depperschmidt ("Depperschmidt") is a resident of Wichita,
 21 Kansas. Depperschmidt purchased an iPhone 7 plus and a Samsung Galaxy S5.

22 **B. Defendant**

23 16. Defendant Qualcomm is a Delaware corporation having its principal place of
 24 business at 5775 Morehouse Drive, San Diego, California 92121. Qualcomm develops,
 25 designs, licenses, and markets worldwide its digital communications products and services,
 26 primarily through its two main business segments: Qualcomm CDMA Technologies ("QCT")

27

28 ³ Brian Heater, *Apple files a \$145 million patent suit against Qualcomm in China*, TC's
 Crunchboard (Jan. 25, 2017), <https://techcrunch.com/2017/01/25/apple-qualcomm-2/>.

1 and Qualcomm Technology Licensing (“QTL”), both wholly-owned subsidiaries of
 2 Qualcomm. QCT deals with equipment sales while QTL grants licenses or otherwise
 3 provides rights to use portions of Qualcomm’s patent portfolio. QCT is operated by
 4 Qualcomm Technologies, Inc. (“QTI”), another wholly-owned subsidiary of Qualcomm.

5 17. Qualcomm has extensive offices and employees throughout this District,
 6 including in San Francisco, Santa Clara, and Alameda counties,⁴ and regularly conducts
 7 business here. Many of its licensees are also located in this District.

8 **III. JURISDICTION AND VENUE**

9 18. This action arises under Sections 4 and Section 16 of the Clayton Act, 15
 10 U.S.C. §§ 15(a) and 26, for Qualcomm’s violations of Section 2 of the Sherman Act, 15
 11 U.S.C. § 2 and Section 3(b) of the Sherman Act, 15 U.S.C. § 3(b). The Court has subject
 12 matter jurisdiction over this claim pursuant to 28 U.S.C. §§ 1331 and 1337.

13 19. Plaintiffs also bring claims under state laws as set forth herein. The Court has
 14 supplemental jurisdiction over these pendant state law claims under 28 U.S.C. §§ 1332(d) and
 15 1367. Each of Plaintiffs’ state law claims arises out of the same factual nucleus as Plaintiffs’
 16 federal law claims.

17 20. Venue is proper in this Court pursuant to Section 12 of the Clayton Act, 15
 18 U.S.C. § 22 and 28 U.S.C. § 1391 because a substantial part of the events giving rise to
 19 Plaintiffs’ claims occurred in this District, and Qualcomm transacts business and maintains
 20 facilities in this District and thus is subject to personal jurisdiction here. Qualcomm is
 21 engaged in interstate commerce, and its activities, including those activities that form the
 22 basis of this Complaint, substantially impact interstate commerce.

23 21. Millions of relevant cellular devices were purchased at artificially inflated rates
 24 in this District.

25 //

26 //

27

28 ⁴ Qualcomm, *Offices & Facilities*, <https://www.qualcomm.com/company/facilities/offices> (last visited Jan. 16, 2017).

1 **IV. INTRADISTRICT ASSIGNMENT**

2 22. Pursuant to the Northern District of California's Civil Local Rule 3-2(c-e), the
 3 intradistrict assignment should be to the San Jose Division. This action arises in Santa Clara
 4 County because a substantial part of the events giving rise to these claims occurred there.
 5 Additionally, Qualcomm has offices in Santa Clara and San Jose, and third parties that have
 6 information relevant to this action, including leading cellular device manufacturers and
 7 Qualcomm competitors, also have offices in Santa Clara County. As noted above, the FTC
 8 also filed a case in the San Jose Division concerning the same practices at issue in this case.

9 **V. FACTUAL BACKGROUND**

10 **A. SSOs, SEPs, and FRAND Obligations**

11 23. Interoperability and compatibility are critical for most modern electronic
 12 devices. A wireless network (such as those operated by AT&T, Verizon, and Sprint) must be
 13 able to communicate with cellular devices utilizing that cellular network and visa versa.
 14 Accordingly, their infrastructure and design, and the components underlying that
 15 infrastructure and design, must work together, regardless of which company made them.

16 24. Cellular devices contain a modem chipset – the core electronic unit that allows
 17 it to transmit and receive information (either voice telephone calls or data) to and from the
 18 wireless network. Specifically, these chipsets transmit information, via radio waves, to
 19 cellular base stations. Base stations, in turn, transmit information to and from telephone and
 20 computer networks. It is essential that all components involved in this transmission be able to
 21 communicate seamlessly with one another.

22 25. Because of the multitude of devices and technologies, device designers,
 23 component manufacturers, and others have agreed to uniform standards to ensure the smooth
 24 operation of the wireless network and the cellular devices that connect to it. To achieve this,
 25 wireless network carriers, chipset manufacturers, cellular device manufacturers, and others
 26 have established SSOs, such as the European Telecommunications Standard Institute
 27 ("ETSI"), the International Telecommunications Union ("ITU"), the Institute of Electrical and
 28

1 Electronic Engineers (“IEEE”), and, in the United States, the Telecommunications Industry
2 Association (“TIA”).

3 26. SSOs collaborate to set technology requirements that ensure mass
4 interoperability among all system components. The technology incorporated into a standard
5 is typically chosen from among different options. Once incorporated and widely adopted, that
6 technology is not always used because it is the best or the only option; it is used because it is
7 necessary to comply with the standard. Competition is eliminated as alternatives cannot
8 comply with the standard. Additionally, to implement a technological standard, devices often
9 need to incorporate a patented invention on which the standard is based. These are the SEPs
10 discussed previously. Holders of patents essential to technology incorporated into a standard
11 declare their patents as SEPs. Consequently, to be compliant with the applicable standard,
12 manufacturers of products using the patented technology generally need to license the SEP.

13 27. Antitrust law recognizes that, under certain circumstances, collaboration by
14 industry participants can increase competition, innovation, product quality, and consumer
15 choice. For example, in this context, collaboration allows consumers to be confident that
16 cellular devices bought from different manufacturers will operate with each other and with the
17 wireless network that they choose. Similarly, common standards allow component
18 manufacturers, carriers, and others in the industry to invest in technological advancement with
19 confidence that their products will work with wireless networks.

20 28. However, standards can pose challenges to device and device component
21 manufacturers and can involve tradeoffs for consumers. For example, a company
22 implementing standards in a product must use certain mandated technologies, even where
23 many viable and perhaps even superior alternatives exist. Once a standard is adopted,
24 participants begin to make investments tied to the implementation of the standard. Because
25 these participants may face substantial switching costs in abandoning initial designs and
26 substituting a different technology, an entire industry can become “locked in” to a standard.

27 29. The adoption of SEPs into technological standards also enhances the potential
28 for abuse by the patent owner. “Patent hold-up” occurs when a SEP holder demands

1 excessive royalties after companies are locked in to using a standard. Where standardized
 2 technologies are covered by patents, companies that choose to implement a standard in
 3 their products have no choice but to license those patents (and accept the licensor's
 4 terms) or face a lawsuit if they use the technology without a license. "Royalty stacking"
 5 arises when a standard implicates numerous patents. These royalty payments "stack" on top
 6 of each other and, in turn, inflate the cost of the product to the consumer. Royalty stacking
 7 can be a significant concern:

8 The data show that royalty stacking is not merely a theoretical concern.
 9 Indeed, . . . we estimate potential patent royalties in excess of \$120 on
 10 a hypothetical \$400 smartphone—which is almost equal to the cost of
 11 device's components. Thus, the smartphone royalty stack across
 12 standardized and non-standardized technology is significant, and those
 13 costs may be undermining industry profitability—and, in turn,
 14 diminishing incentives to invest and compete.⁵

15 30. To help alleviate these potential concerns, before agreeing to a particular
 16 standard, SSOs seek certain assurances from patent owners. Specifically, SSOs ask SEP
 17 holders agreed to license their patents on fair, reasonable, and non-discriminatory terms,
 18 referred to as a SEP holder's FRAND obligations. For example, the IEEE asks SEP holders
 19 to pledge that they will grant licenses to an unrestricted number of applicants on "reasonable,
 20 and nondiscriminatory" (or "RAND") terms. If a patent holder does not choose to make
 21 this promise, the SSOs design a standard without using the patented technology.

22 31. FRAND obligations are designed to, among other things, prevent SEP holders
 23 from wielding control over essential technology and restricting competition, development,
 24 and research related to the standard. SEP holders generally agree to FRAND terms because
 25 SSOs may exclude the holder's technologies from the standard if it does not agree to FRAND
 26 terms. SEP holders also benefit from license fees and royalties they gain from cooperating
 27 with the SSO.

28 ⁵ Joseph J. Mueller & Timothy D. Syrett, *The Smartphone Royalty Stack: Surveying Royalty Demands for the Components within Modern Smartphones* (May 29, 2014), <https://www.wilmerhale.com/pages/publicationsandnewsdetail.aspx?NewsPubId=17179872441>.

1 32. The TIA has explained this point⁶:

2 Market-driven **Open Standards** can help promote competition and
 3 innovation. Such standards are developed or ratified through a
 4 voluntary, open and consensus-based process.

5 This process is defined by flexible policies that balance incentives to
 6 participate in and contribute to the formulation of standards. This
 7 process benefits users and consumers by the broad implementation of
 8 the resulting standards. One element of a voluntary, open and
 9 consensus-based process addresses the inclusion of patented
 10 technologies. The patent policies of standards organizations typically
 11 find a balance among differing interests. For example, implementers
 12 need to access and use patented technology included in the standard.
 13 Patent holders need to preserve their rights in a way that encourages
 14 them to contribute their innovative solutions to the standardization
 15 effort. “RAND” patent policies seek to provide this type of balance by
 16 helping to make that patented technology available to all on
 17 “reasonable and non-discriminatory” (i.e., RAND) terms and
 18 conditions.

19 33. As the United States Court of Appeals for the Third Circuit has also noted in a
 20 case against Qualcomm:

21 [A] standard, by definition, eliminates alternative technologies. When
 22 a patented technology is incorporated in a standard, adoption of the
 23 standard eliminates alternatives to the patented technology. Although
 24 a patent confers a lawful monopoly over the claimed invention, its
 25 value is limited when alternative technologies exist. That value
 26 becomes significantly enhanced, however, after the patent is
 27 incorporated in a standard. Firms may become locked in to a standard
 28 requiring the use of a competitor’s patented technology. The patent
 29 holder’s [intellectual property rights], if unconstrained, may permit it
 30 to demand supracompetitive royalties. It is in such circumstances that
 31 measures such as FRAND commitments become important safeguards
 32 against monopoly power.

33 *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 314 (3d Cir. 2007) (citations omitted).

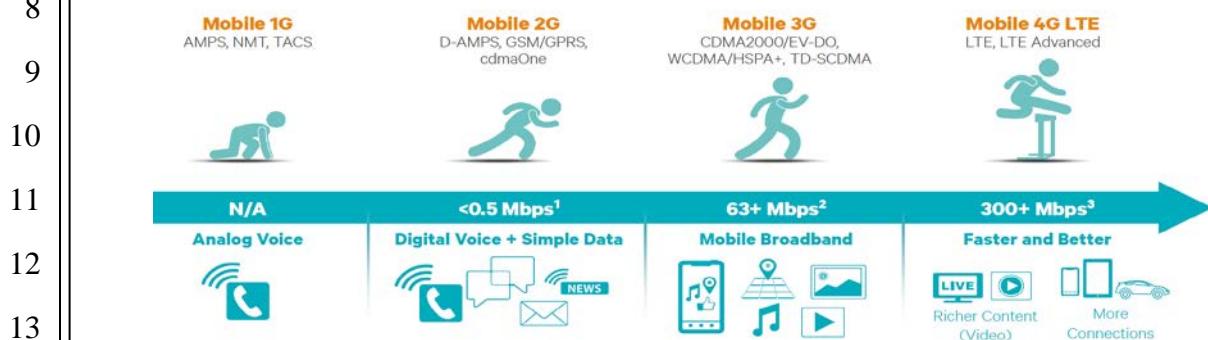
34. When a SEP holder makes a FRAND promise to a SSO, implementers of the
 35 standard and their customers are third-party beneficiaries of that promise. FRAND
 36 obligations are more than a matter of a private contract between owners of technology, on the
 37

27 28 ⁶ TIA, *Approved 20 June 2008 by the Intellectual Property Rights Standing Committee of the*
 29 *TIA; TIA – A Leading Developer of Open Standards*, tiaonline.org (June 20, 2008),
 30 http://www.tiaonline.org/standards/about/documents/TIA-IPR_20080620-003_TIA_OPEN_STANDARDS-CLEAN_R4.pdf.

1 one hand, and SSOs and their other members (and implementers of the standard as intended
 2 third party beneficiaries), on the other. Instead, they are a critical precondition for antitrust
 3 tolerance of the industry collaboration on which standard-setting depends.

4 **B. The Cellular Industry and Qualcomm's Dominance and Abuse of Power.**

5 35. Wireless standards have evolved in distinct generations, as consumers
 6 demanded more features and the industry responded by developing new innovations. The
 7 following graphic, created by Qualcomm, shows the evolution of this technology.⁷



14 36. For purposes of this case, following the first generation of cellular technology,
 15 the cellular industry developed second generation (“2G”) cellular technology, from which two
 16 primary technology paths, or families of standards, emerged: (1) CDMA, which stands for
 17 “Code Division Multiple Access” and (2) “GSM,” which stands for “global system for
 18 mobility.” CDMA is a channel access method used by various radio communication
 19 technologies. It provides multiple accesses, where several transmitters can send information
 20 simultaneously over a single communication channel. CDMA is used as the access method in
 21 many mobile phone standards. GSM is another access method that is widely used in Europe
 22 and much of Asia, other than Japan and South Korea. It utilizes a variation of time division
 23 multiple access. Wireless network carriers operated under one or the other path, with, for
 24 example, Verizon and Sprint operating CDMA-path networks, while AT&T (formerly
 25 Cingular) and T-Mobile operated GSM-path networks. The CDMA and GSM technology

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 28 ⁷ Qualcomm, *The Evolution of Mobile Technologies-1g-2g-3g-4g-lte*, (June 2014),
<https://www.qualcomm.com/media/documents/files/the-evolution-of-mobile-technologies-1g-to-2g-to-3g-to-4g-lte.pdf>.

1 paths are not interoperable; in other words, equipment and technologies designed to be
 2 compatible with one standard cannot be used for the other standard.

3 37. Mobile devices are configured for a particular carrier, like AT&T or Verizon,
 4 and thus chipsets designed for a particular wireless device must conform to the standard
 5 technology chosen for the carrier's associated network. In other words, CDMA-based
 6 networks demand chipsets that conform to the CDMA standard, and GSM networks require
 7 chipsets that conform to the GSM standard. As a result, chipsets that comply with a given
 8 standard are not substitutes for chipsets that comply with other standards. These chipsets
 9 likewise have different price and demand characteristics. Downstream consumers purchase
 10 cell phones that include chipsets configured to operate using the standards chosen for a
 11 particular network, and once purchased, those consumers are inextricably tied to that standard
 12 for use of that device.

13 38. Qualcomm pioneered the development of CDMA. As a result, it controlled,
 14 and continues to control, the market for such technology, initially selling 90% of the CDMA-
 15 chipsets and continuing to control over 80% of the market. Additionally, Qualcomm amassed
 16 many patents related to this standard. Consequently, virtually any company that makes
 17 CDMA-based products—be they chipsets, phones, or infrastructure gear—has to obtain a
 18 license from Qualcomm. Licensees pay a one-time fee for access to the patent portfolio and
 19 then royalties based on the final product sold by the licensee (*e.g.*, a smartphone). Nearly all
 20 cellular companies have signed patent licenses with Qualcomm.

21 39. Qualcomm's royalty stream has continued in the technologies standardized in
 22 third generation ("3G") cellular technology. As with the prior generation of cellular
 23 technology, 3G evolved into two competing standards—but this time, *both* major standards
 24 were based on CDMA. While an improved version of CDMA technology was developed, the
 25 Universal Mobile Telecommunications Service ("UMTS") standard was also developed.

26 40. UTMS uses radio technology called WCDMA, which stands for "Wideband
 27 Code Division Multiple Access." WCDMA technology allows for even further increased data
 28 speed and capacity. The UMTS standard was adopted by SSOs in the United States and

1 elsewhere after evaluating alternative available technologies. Qualcomm supplies some of the
 2 essential technology that ETSI included in the UMTS standard and holds intellectual property
 3 rights (“IPRs”), such as patents, in this technology. Among others, Qualcomm owns the
 4 essential patents for the WCDMA standard.

5 41. Consequently, CDMA-based technology has been adopted for *all* 3G wireless
 6 standards throughout the world, and Qualcomm has in turn reaped more than \$50 billion in
 7 licensing revenues since 2000. Indeed, Qualcomm charges a royalty on nearly every
 8 smartphone made, whether or not the device uses its chips.

9 42. ETSI and other SSOs required a commitment from vendors whose
 10 technologies are included in the CDMA and other CDMA-based standards to license their
 11 technologies on FRAND terms. Qualcomm voluntarily and publicly agreed to accept
 12 FRAND obligations, allowing it to license its patent portfolio to more than 155 companies,
 13 and making its portfolio the most widely licensed in the industry.

14 43. Indeed, in 2008, Qualcomm noted that it “has had a long standing policy of
 15 broadly offering to license its standards essential patents for CDMA-based
 16 telecommunications standards on terms and conditions that are fair, reasonable, and free from
 17 unfair discrimination (FRAND), subject to reciprocity.”⁸ But in that same press release,
 18 Qualcomm publicly stated that “FRAND embodies a flexible approach that allows individual
 19 licensors and licensees to negotiate the terms and conditions that are best suited to address
 20 their respective commercial objectives” and “FRAND does not, and never has, prescribed
 21 formulas for imposing cumulative royalty caps or proportional allocations of such royalty
 22 caps.” This public statement was false. As regulatory actions in multiple countries have
 23 confirmed, Qualcomm has not abided by FRAND principles and its interpretation of FRAND
 24 is not consistent with the obligations imposed on it by SSOs. Qualcomm’s promises to
 25 comply with its FRAND obligations induced the SSOs to adopt its technology in the cellular
 26 standards relevant to this action. That conduct constituted deceit and fraud on the SSOs and

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 28 ⁸ Qualcomm, *LTE/WiMax PATENT LICENSING STATEMENT* (Dec. 2008),
<https://www.qualcomm.com/documents/ltewimax-patent-licensing-statement>.

1 has injured Plaintiffs and others that have paid unreasonably high prices for cellular devices
 2 as a result of Qualcomm's royalty demands.

3 44. Qualcomm has abused its power over SEPs and the chipset supply to increase
 4 its own dominance in these markets and charge exorbitant royalties. It has also abused its
 5 involvement in the SSOs, which set standards around Qualcomm technology and gave it the
 6 means to be as economically powerful as it has become. Qualcomm's manipulation of this
 7 unique position is confirmed by multiple investigations of its conduct by trade and
 8 competition agencies around the world, as discussed below.

9 45. The fourth generation of cellular technology ("4G") brought with it the "LTE"
 10 standard, which stands for Long Term Evolution of UMTS. Nearly all cellular-enabled
 11 devices sold today support LTE for 4G service. LTE is an "orthogonal frequency division
 12 multiple access" or "OFDMA"-based technology. The LTE standard does not implement
 13 CDMA-based technologies.

14 46. But like the UMTS technology before it, the arrival of LTE has not
 15 significantly impacted Qualcomm's control over the chipset market or the power of its
 16 licensing business. Qualcomm holds a patent portfolio that applies to LTE technologies,
 17 including OFDMA, and over 90 companies (including Apple, LG, Nokia, and Samsung) have
 18 royalty-bearing licenses under Qualcomm's patent portfolio for use in OFDMA products
 19 (which do not implement any CDMA-based standards). Additionally, many of the 4G-based
 20 cellular devices still implement CDMA-based technology to be backwards-compatible with
 21 other CDMA-based technologies that are still in use today. Qualcomm exclusively supplies
 22 multimode CDMA-LTE chipsets that are backward compatible with CDMA.

23 47. Consequently, with its power over CDMA technology, Qualcomm can and
 24 does use this as leverage to gain a greater share of the LTE-chipset market. The following
 25 chart, prepared by the KFTC⁹, demonstrates how Qualcomm has used control over CDMA-
 26 based technologies to acquire more power and control over the LTE chipset market.

27
 28 ⁹ Qualcomm has provided an unofficial translation of the KFTC's press release on its website.
 See KFTC Issued Press Release Dated December 28, 2016 – Unofficial English Translation,

<Qualcomm's Market Share Trend in Modem Chipset Market per Standard (Based on Revenues)>

	Yr 2008	Yr 2009	Yr 2010	Yr 2011	Yr 2012	Yr 2013	Yr 2014	Yr 2015
LTE	-	-	34.2%	58.8%	94.5%	96.0%	84.8%	69.4%
CDMA	98.4%	97.6%	96.4%	94.3%	92.4%	93.1%	91.6%	83.1%
WCDMA	38.8%	47.4%	45.7%	55.0%	50.4%	53.9%	48.8%	32.3%

* Source: Strategy Analytics

6 48. In sum, Qualcomm holds a dominant position in the supply of chipsets that
7 support CDMA, on which devices sold by Verizon and Sprint continue to depend. It also
8 holds a dominant position over the LTE-chipset supply. Qualcomm has had a share of at least
9 80% or more of the CDMA chipset market for many years, and Qualcomm’s share of the LTE
10 chipsets market was above 90% between 2012 and 2014, and remains close to 70% today.
11 Qualcomm has leveraged its monopoly power over the supply of these chipsets to force
12 device manufacturers into anticompetitive license agreements. In other words, because these
13 companies need CDMA- and LTE-based chipsets (controlled by Qualcomm) to be able to
14 operate with CDMA- and LTE-based networks, Qualcomm has coerced device manufacturers
15 into accepting unreasonable and one-sided license terms dictated by Qualcomm. As one
16 commentator noted: “Qualcomm’s status as both a chipset and IP vendor provides them with
17 unparalleled leverage to collect licensing fees at a lower cost, simply by denying physical
18 delivery of the chipsets until all fees are paid.”¹⁰

19 49. In its complaint, the FTC referred to this as the “no license, no chips” policy
20 and said Qualcomm’s “anomalous” position set it apart from other SEP holders in the
21 industry. As the FTC pointed out, this policy compelled potential SEP licensees to accept
22 Qualcomm’s terms and effectively precluded them from seeking judicial determinations of
23 what an appropriate FRAND rate would be. An example of such a determination is provided
24 by *Microsoft Corp. v. Motorola, Inc.*, No. C10-1823JLR, 2013 WL 2111217 (W.D. Wash.

<https://www.qualcomm.com/documents/kftc-issued-press-release-dated-december-28-2016-unofficial-english-translation> (last visited Jan. 15, 2017).

²⁷ ¹⁰ Richard A. Taddio, *Long – Qualcomm (NASDAQ: QCOM) - \$68.42*, Columbia Business School 2015,
²⁸ https://www8.gsb.columbia.edu/valueinvesting/sites/valueinvesting/files/Taddio_Richard-QCOM_0.pdf (last visited Jan. 16, 2017).

1 April 25, 2013), *aff'd*, 795 F.3d 1024 (9th Cir. 2015). There, the SEP holder sought \$6-\$8 as
 2 a royalty rate for each gaming console manufactured by the plaintiff, and the district court,
 3 after a bench trial, ruled that the FRAND rate was only four cents per console. The United
 4 States Court of Appeals for the Ninth Circuit upheld this determination, stating:

5

The framework settled on [for making a FRAND determination] was
 6 "generally [consistent] with Motorola's approach." Applying that
 7 approach, the district court sought to approximate the royalty rates
 8 upon which the parties would have agreed by setting up a hypothetical
 9 negotiation between the parties. In doing so, the court carefully thought
 10 through the "factors an SEP owner and implementer would consider"
 11 in an actual negotiation directed at licensing a patent subject to RAND
 12 commitments. The court then discussed each of Motorola's fifteen
 13 H.264 patents and eleven 802.11 patents, considering the objective
 14 value each contributed to each standard, given the quality of the
 15 technology and the available alternatives as well as the importance of
 those technologies to Microsoft's business. Finally, the court
 performed a meticulous analysis of the testimony of eighteen
 16 witnesses, including executives, economists, and technology experts,
 to sort out which evidence to rely upon in determining the RAND
 royalty rate. Generally, the court credited Motorola's experts; where it
 did not, it provided reasoned explanations for not doing so.

16

795 F.3d at 1040 (first edit added; other edits in original).¹¹

17

50. Qualcomm also holds a dominant position in the SEP licensing market.
 Qualcomm has declared thousands of its patents as essential to CDMA, UMTS (WCDMA),
 and LTE standards. Consequently, device and device component manufacturers are highly
 reliant on Qualcomm's SEPs, as each CDMA-, UMTS-, and/or LTE-related SEP is
 indispensable and irreplaceable for such manufacturers. Qualcomm thus controls the
 licensing market for SEPs for CDMA, UMTS (WCDMA), and LTE technologies because
 manufacturers could not produce 3G and 4G devices without risking Qualcomm's initiating
 patent infringement lawsuits or seeking injunctions.

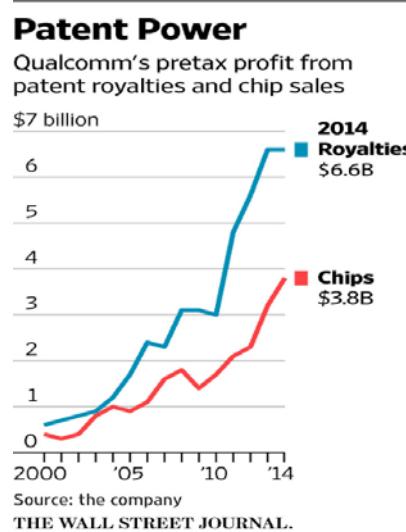
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¹¹ See also *Realtek Semiconductor Corp. v. LSI Corp.*, No. C-12-3451-RMW, 2014 WL 2738226, at *6 (N.D. Cal. Aug. 16, 2014) ("The court hereby enters declaratory judgment that, upon Realtek's request for a license, to be in compliance with its RAND commitment, LSI must offer Realtek a license to the '958 Patent on RAND terms, including a royalty rate of 0.12% on the total sales of Realtek's products.").

1 51. Qualcomm also uses its SEPs to require device and device component
 2 manufacturers and others to license its entire patent portfolio, which includes non-SEPs as
 3 well. Non-SEPs refer to the patents that are either not essential to the realization of the
 4 standard or replaceable in their functionalities through design-around or avoidance design.
 5 There is no requirement that non-SEPs be licensed on FRAND terms. By putting both SEPs
 6 and non-SEPs into one license, Qualcomm avoids its obligation to set license terms on a
 7 FRAND basis. In doing so, Qualcomm can charge exorbitant royalties to any licensees that
 8 were forced to accept the packaged patent licenses.

9 52. Qualcomm's licensing division brings in the vast majority of its profits, as
 10 illustrated in the graph below. As such, it is critical for Qualcomm to maintain its licensing
 11 and related terms which have made it so profitable.



53. Qualcomm has structured its business to maintain that licensing power. In
 2007, Qualcomm claimed publicly that any manufacturers using CDMA and
 UMTS/WCDMA technology "ha[s] to take out a license from Qualcomm" and that
 Qualcomm had been "pretty consistent in that model."¹²

¹² Qualcomm, Inc. at Jefferies Technology Conference (Oct. 2, 2007), at 5.

1 54. Again in 2007, Qualcomm filed an *amicus* brief to the United States Supreme
 2 Court in which it described its licensing business model as follows:¹³

3 Qualcomm has provided chipmakers nontransferable, worldwide,
 4 nonexclusive, restricted licenses to its portfolio of technically
 5 necessary patents through licensing agreements called ASIC
 6 [Application Specific Integrated Circuits] Patent License Agreements
 7 (“APLAs”). Chipmaker licensees typically pay Qualcomm an up-front
 8 license fee and a running royalty (paid quarterly) that is an agreed upon
 9 percentage of the defined Net Selling Price of the chips produced by
 10 the licensee. . . . An APLA provides the chipmaker-licensee with a
 11 license to *make* (or have made) its own ASICs. An APLA also provides
 12 the chipmaker-licensee with a restricted license to *sell* ASICs, but only
 13 to handset makers that the APLA defines to be an “Authorized
 14 Purchaser” for incorporation into fully assembled handsets.
 15 Authorized Purchasers are those handset makers that themselves have
 16 a license from Qualcomm through their own Subscriber Unit License
 17 Agreement (“SULA”) to make, use and sell fully assembled handsets
 18 that, in the absence of a SULA, would infringe Qualcomm’s patents.
 19 Importantly, by their express terms, APLAs do *not* grant a license to
 20 the chipmaker to *use* the ASICs—i.e., licensed chipmakers may not
 21 themselves use or pass on to others the right to use the chipmaker’s
 22 ASICs to make, operate or sell handsets or any other product. APLAs
 23 explicitly state that the rights to use the ASICs to make, operate or sell
 24 handsets are only conferred by licensing agreements between
 25 Qualcomm and Authorized Purchasers (i.e., by SULAs). APLAs also
 26 expressly state that the license granted is only for the limited scope laid
 27 out, that no other license is granted or implied and that if the chipmaker-
 28 licensee sells ASICs to entities that are not Authorized Purchasers, the
 licensee has materially breached the APLA, which gives Qualcomm
 the right to terminate the agreement, including the license granted.

20 As previously mentioned, producers of chips that are licensed through
 21 APLAs are granted, *inter alia*, a license to sell such chips only to
 22 handset makers that have entered into a SULA with Qualcomm. The
 23 standard terms of the SULAs have granted handset makers a
 24 nontransferable, worldwide, nonexclusive, unrestricted license to
 25 Qualcomm’s patents to *make* (and have made), import and *use*
 handsets, and to *sell* (and offer to sell) completed handsets. SULAs
 typically provide for an up-front licensing fee to be paid to Qualcomm,
 along with a running royalty (paid quarterly) that is set as a percentage
 of the Net Selling Price of the handsets sold.

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¹³ Br. of Qualcomm Inc. as Amicus Curiae Supporting Respondent, *Quanta Comp., Inc. v. LG Elecs., Inc.*, 533 U.S. 617 (2008) (No. 06-937), at 7-9.

1 55. Even where Qualcomm sells its own chips, it requires purchasers to agree to its
 2 license agreements (as the FTC also noted)—which include the royalty rate based on the
 3 selling price of the device. As Qualcomm explained in its amicus brief:

4 Qualcomm is also in the business of developing and selling its own
 5 chips and software for wireless handsets. Qualcomm typically sells
 6 chips only to those handset manufacturers that are licensed to
 7 Qualcomm's patents under a SULA. Such chip sales are pursuant to
 8 Components Supply Agreements, in which handset makers agree to
 9 pay Qualcomm an agreed upon price for the chips sold by Qualcomm.
 Components Supply Agreements provide that the buyer-handset
 makers may only incorporate the chips purchased from Qualcomm into
 fully assembled handsets that are the subject of the SULA.

10 Essentially, cellular devices today are unable to connect to their network without paying a
 11 royalty (between 3-5% of the price of the entire device) to Qualcomm.¹⁴

12 56. In short, the KFTC correctly identified three of Qualcomm's abusive and
 13 anticompetitive practices. *First*, it did not provide SEP licenses to competing chipset
 14 companies while threatening to sue them under those patents if they compete against
 15 Qualcomm in the sale of chipsets. *Second*, in selling chipsets to device and device
 16 manufacturers, Qualcomm demanded the execution and performance of its license
 17 agreements, thus leveraging its SEPs improperly. And as a result, *third*, QTL coerced cellular
 18 phone makers to accept unilateral onerous terms.

19 57. The KFTC depicted this conduct in the graphic below.¹⁵

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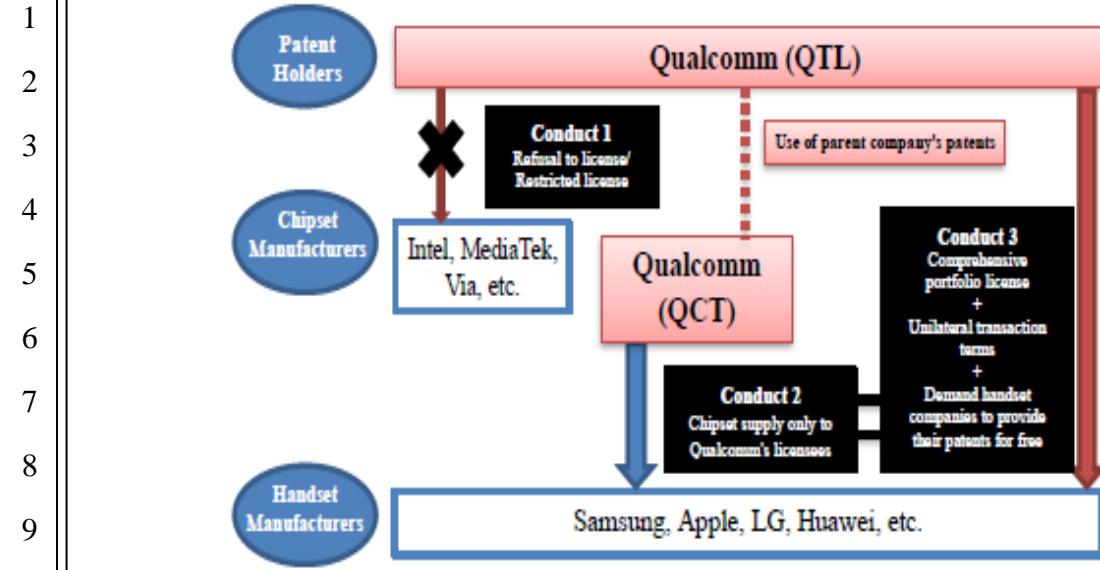
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¹⁴ See also Subscriber Unit License Agreement, SEC.gov, <https://www.sec.gov/Archives/edgar/data/1092492/000119312504140764/dex103.htm> (last visited Jan. 16, 2017).

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¹⁵ See *supra* note 9.



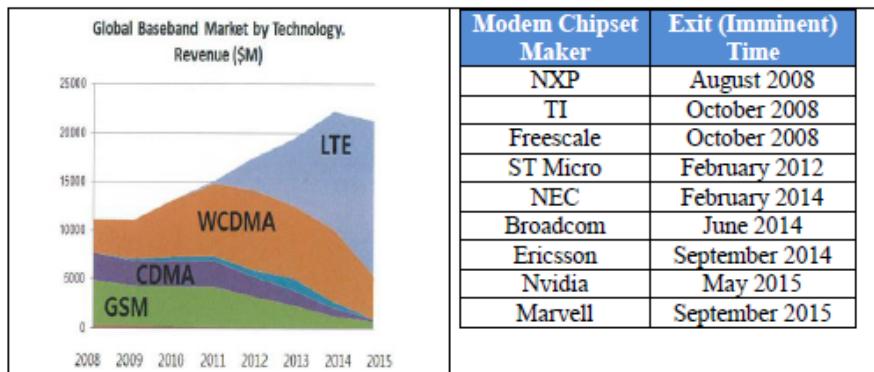
58. Qualcomm's policy of not licensing SEPs to competing chipset makers while insisting on licensing from cellular device manufacturers has entrenched its market power.

59. Additionally, as device manufacturers cannot purchase chipsets from Qualcomm's competitors without also paying royalties to Qualcomm, to avoid such royalties, in some cases they agree to deal exclusively or near-exclusively with Qualcomm on the purchase of chipsets. As the FTC explained in its recently-filed complaint, since 2007, Apple has entered into agreements to deal exclusively with Qualcomm in exchange for partial relief from Qualcomm's standard royalties. Samsung has also entered into a similar exclusive dealing arrangement with Qualcomm.¹⁶ Qualcomm's exclusive supply arrangements with these device manufacturers denies other modem chipset suppliers the benefits of working with those manufacturers and hampers their development into effective competitors.

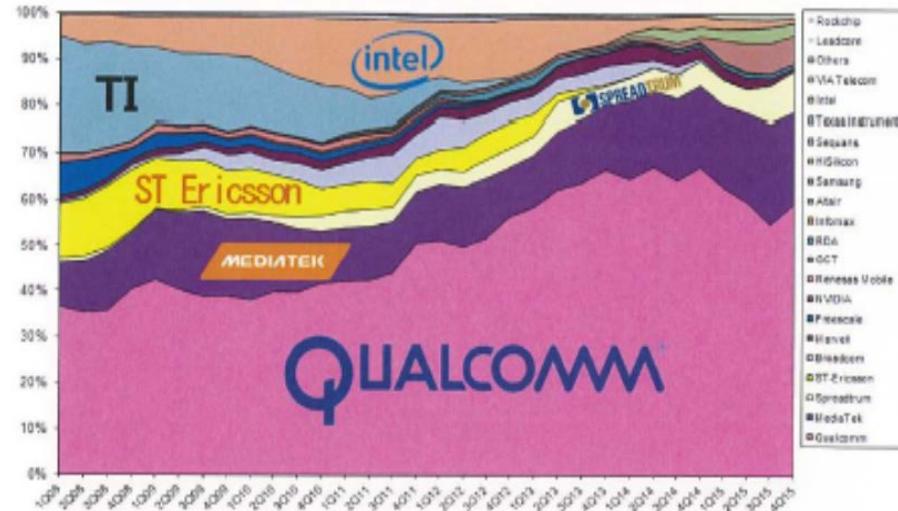
27 ¹⁶ Joel Hruska, *Qualcomm may have inked exclusive deal to put Snapdragon 820 in Samsung hardware*, ExtremeTech.com (Dec. 21, 2015) <https://www.extremetech.com/mobile/219791-qualcomm-may-have-inked-exclusive-deal-to-put-snapdragon-820-in-samsung-hardware>.

1 60. As the KFTC explained, the size of the modem chipset market doubled since
2 2008, but Qualcomm's licensing practices caused no significant competitor to enter the
3 market and rather caused many existing competitors to exit it¹⁷:

<Market Growth Trend in the Modern Chipset Market and Market Exit by Major Chipset Companies>



2 61. The result has been a steady increase in Qualcomm's share of the chipset
3 market.¹⁸



3 62. This dominance in the chipset market, coupled with its ownership of critical
4 SEPs built into several of the standards adopted by various SSOs, allowed Qualcomm to

¹⁷ See *supra* note 9.

18 *Id.*

1 impose onerous license terms on device manufacturers, including exorbitant royalties that
 2 were not the result of the FRAND process.

3 63. Qualcomm's royalty rates of 5% for most CDMA-based products and 3.25%
 4 for more recent LTE-based products are significantly higher than others in the industry. The
 5 following chart demonstrates this in the LTE context as of 2010:

Company	Announced LTE Rates	No. of Essential LTE Patents
1. Qualcomm	3.3%	350
2. Huawei	1.5%	182
3. Ericsson	1.5%	146
4. Nokia	1.5%	142
5. Nortel	1.0%	46
6. Siemens	0.8%	32
7. Motorola	2.3%	16
8. Alcatel	2.0%	9

11 **Source:** Stasik, Eric, "Royalty Rates and Licensing Strategies for Essential
 12 Patents on LTE (4G) Telecommunication Standards," *les Nouvelles*, September
 13 2010, p. 116.

14 64. Qualcomm's rate base is also part of what makes Qualcomm's royalties so
 15 abusive. Qualcomm admits that its "[r]oyalties are generally based upon a *percentage of the*
 16 *wholesale (i.e., licensee's) selling price of complete licensed products*, net of certain
 17 permissible deductions (including transportation, insurance, packing costs and other items)." (Emphases added). Using the entire value of an end product is not a reasonable basis for
 18 calculating SEP-based royalties. As Apple has pointed out in its complaint, that rate base is
 19 calculated as a percentage of the value that Apple's own research, development, and
 20 innovation created in successive generations of iPhones. Indeed, around February 8, 2015,
 21 the IEEE updated its licensing policy, stating that a reasonable royalty should be the value
 22 attributable to a SEP, excluding the value of that SEP's inclusion in an IEEE standard, and
 23 that a factor to consider when determining the reasonable rate is the value of the relevant
 24 functionality of the smallest salable compliant implementation that practices the essential
 25 patent claim.¹⁹ Qualcomm's power and leverage allows it force licensees to pay excessive
 26

27 19 Deepa Sundararaman, *Inside The IEEE's Important Changes To Patent Policy*, Law360
 28 (Apr. 3, 2015), <https://www.law360.com/articles/637457/inside-the-ieee-s-important-changes-to-patent-policy>.

1 rates on an unreasonable rate basis, which results in a royalty divorced from the actual value
 2 attributable to its technologies.

3 65. Qualcomm realizes the benefits of maintaining its licensing business and
 4 chipset business in one company and has rejected a push from an activist investor hedge fund
 5 to split the businesses into two companies. “The strategic benefits of the current structure will
 6 best fuel Qualcomm’s growth as we move through the upcoming technology transitions and
 7 extend our technologies into new user experiences, services and industries,” said Qualcomm’s
 8 CEO, Steve Mollenkopf.²⁰

9 66. The Apple complaint highlights another issue regarding Qualcomm’s conduct.
 10 Apple states at paragraph 93 of the complaint that “[s]pecifically, since 2011, Qualcomm has
 11 conditioned billions of dollars in rebates on exclusivity or de facto exclusivity from Apple.
 12 The monopoly power that Qualcomm enjoys today in the market for premium LTE chipsets is
 13 directly related to Qualcomm’s foreclosure of Apple’s business to actual and potential
 14 competitors in the premium LTE chipset market.”²¹ Apple made a submission to the KFTC
 15 in opposition to Qualcomm, and it notes at paragraph 160 of its complaint that “in restraining
 16 Apple from initiating action or bringing concerns to law enforcement, Qualcomm conditioned
 17 billions of dollars on Apple’s silence before courts and regulators about Qualcomm’s business
 18 practices. And Qualcomm is now interpreting that agreement to retaliate against Apple for
 19 responding to requests for information about Qualcomm’s practices from competition
 20 agencies, inhibiting law-enforcement review of Qualcomm’s anticompetitive practices.”

21 **C. Regulators Investigate and Penalize Qualcomm’s Abusive Conduct**

22 67. While Qualcomm’s abusive and unfair licensing practices have allowed it to
 23 rake in billions of dollars in undeserved profits, these practices have not gone unnoticed. In
 24

25 ²⁰ Mike Freeman, *Qualcomm Rejects Breakup Plan*, Los Angeles Times (Dec. 15, 2015),
 26 <http://www.latimes.com/business/la-fi-qualcomm-20151215-story.html>.

27 ²¹ This alone was arguably inconsistent with Qualcomm’s FRAND promise to SSOs. *See In re Innovatio IP Ventures, LLC Patent Litig.*, No. 11 C 9308, 2013 WL 5593609, at *38 (N.D. Ill. Oct. 3, 2013) (a FRAND licensor “cannot discriminate between licensees on the basis of their position in the market”).

1 the last few years, Qualcomm's royalty and licensing practices have come under scrutiny by
 2 competition regulators from China, South Korea, Taiwan, Japan, Europe, and the United
 3 States. As described below, competition law enforcement authorities around the world have
 4 concluded that Qualcomm's conduct as alleged herein is anticompetitive, unfair, and injurious
 5 to consumers.

6 68. For example, in November 2013, China's NDRC began to investigate
 7 Qualcomm's SEP licensing practices.²² On February 10, 2015, the NDRC found Qualcomm
 8 (1) controlled the SEP Licensing Market and the CDMA, WCDMA, and LTE baseband chip
 9 markets, and (2) abused that dominance by, among other things, charging excessive and
 10 unfairly high royalties to licensees that were "forced" to accept the packaged patent licenses.
 11 The NDRC found Qualcomm's conduct constituted violations of provisions of the China
 12 Anti-Monopoly Law and, among other things, imposed a \$975 million fine.²³ It also ordered
 13 Qualcomm to materially lower the effective royalty by calculating its royalty not based on the
 14 total wholesale price of the device, but by calculating its royalty at 65% of the net selling
 15 price.²⁴

16 69. In July of 2009, the KFTC fined Qualcomm for abusing its dominant shares of
 17 the chipset market and the SEP license market.²⁵ The \$207 million fine was the largest the
 18 KFTC had then ever imposed on a company. Undeterred by this fine, Qualcomm doubled
 19 down on its unlawful conduct. In December of 2016, the KFTC issued a decision imposing
 20

21 22 H. Stephen Harris, Jr., *An Overview of the NDRC Decision in the Qualcomm Investigation*
 22 July 2015, CPI Antitrust Chronicle (July 2015), available at
<http://www.winston.com/en/thought-leadership/an-overview-of-the-ndrc-decision-in-the-qualcomm-investigation.html>.

24 23 Qualcomm Press Release, *Qualcomm and China's National Development and Reform*
 25 *Commission Reach Resolution* (Feb. 9, 2015),
<https://www.qualcomm.com/news/releases/2015/02/09/qualcomm-and-chinas-national-development-and-reform-commission-reach>.

26 24 See *supra* note 22.

27 25 See Yoonhee Kim & Hui-Jin Yang, *A Brief Overview of Qualcomm v. Korea Fair Trade*
 28 *Commission*, CPI Antitrust Chronicle, (Mar. 2015)
<https://www.competitionpolicyinternational.com/assets/Uploads/KimYangMar-151.pdf>.

1 its largest fine for Qualcomm's monopolistic conduct and mandating changes to Qualcomm's
 2 business model. Among other things, the KFTC found Qualcomm had coerced patent license
 3 agreements from device manufacturers while holding hostage the supply of chipsets. In other
 4 words, "Qualcomm actually used the threat of terminating the supply of modem chipsets as
 5 **negotiation leverage** in the process of license negotiations with handset companies."
 6 (Emphases in original).²⁶ The KFTC found that Qualcomm's control over the chipset market
 7 makes it so "handset companies have to bite the bullet and accept Qualcomm's license terms,
 8 even if they are unfair, because if the modem chipset supply is suspended, handset companies
 9 would face the **risk** of their **entire business** shutting down." (Emphases in original).²⁷

10 70. Similarly, the European Commission ("EC") notified Qualcomm of its
 11 investigation in October of 2014. The EC issued a Statement of Objections against
 12 Qualcomm in December of 2015, which alleged that Qualcomm's practices harmed chipset
 13 competition and innovation. Also, in December 2015, the Taiwan Fair Trade Commission
 14 ("TFTC") notified Qualcomm of its investigation into the company's licensing behavior and
 15 among other things, whether Qualcomm's royalty charges are unreasonable.

16 71. Most recently, the United States FTC on January 17, 2017, filed an
 17 enforcement action in this Court seeking a permanent injunction against Qualcomm to undo
 18 and prevent its unfair methods of competition in violation of Section 5(a) of the Federal Trade
 19 Commission Act, 15 U.S.C. § 45(a). The FTC alleges, among other things, that
 20 (1) Qualcomm withholds its baseband processors unless a customer accepts a license to
 21 standard-essential patents on terms preferred by Qualcomm, including elevated royalties; (2)
 22 Qualcomm has consistently refused to license its cellular standard essential patents to its
 23 competitors, in violation of Qualcomm's FRAND commitments; and (3) Qualcomm entered
 24 into exclusive dealing arrangements with Apple, which denied other baseband processor
 25 suppliers the benefits of working with a particularly important cell phone manufacturer and
 26 hampered their development into effective competitors. *Id.*

27
 28 ²⁶ See *supra* note 9.

²⁷ *Id.*

1 **D. Consumers are Harmed as a Direct Result of Qualcomm's Conduct**

2 72. Qualcomm has abused its monopoly power to force device manufacturers and
 3 other licensees to pay excessively high royalties, which has directly resulted in harm to
 4 Plaintiffs and members of the proposed classes because it resulted in them paying higher
 5 prices for their cellular devices than they would have in the absence of Qualcomm's conduct.

6 73. Cellular devices are commodity products that consumers purchase as stand-
 7 alone products. Consumers typically buy cellular devices either from the device
 8 manufacturer, such as Samsung or Apple, or through their network carrier, such as Verizon or
 9 Sprint.

10 74. Device manufacturers and network carriers are subject to vigorous price
 11 competition, and as a result, they do not absorb Qualcomm's unlawful royalties, which are
 12 based on a percentage of the wholesale cost of the device itself. Instead, they pass along
 13 some, or all, of the excessive royalty to consumers. For instance, baseband processors cost as
 14 little as \$10 to \$13, but royalty demands associated with this component approach \$60 for a
 15 \$400 smartphone.²⁸ This disparity between royalty demands and component costs results in
 16 increased costs for cellular devices, which are directly passed on to the consumer.

17 75. Plaintiffs and members of the proposed classes have been forced to pay supra-
 18 competitive prices for cellular devices. As Qualcomm bases its royalties on a percentage of
 19 the wholesale selling price of a complete licensed product, purchasers of cellular devices are
 20 only one level removed from the unlawful overcharge at issue here. Accordingly, this case
 21 will not involve complicated pass-through analysis in multiple and complex distribution
 22 chains. *In Re: Graphics Processing Units Antitrust Litig.*, 540 F. Supp. 2d 1085, 1098 (N.D.
 23 Cal. 2007).

24 76. Economic and legal scholars have recognized that unlawful overcharges of a
 25 component normally result in such pass-through costs. Two antitrust scholars – Professors

27 28 *See supra* note 2; *see also* Nomura 2012 Smartphone Guide
 28 http://www.patentoday.com/wp-content/uploads/2014/08/nomura_smartphone_poster_2012.pdf (last visited Jan. 15, 2017),

1 Robert G. Harris (Professor Emeritus and former Chair of the Business and Public Policy
 2 Group at the Haas School of Business at the University of California at Berkeley) and the late
 3 Lawrence A. Sullivan (Professor of Law Emeritus at Southwestern Law School and author of
 4 the *Handbook of the Law of Antitrust*) – have observed that “in a multiple-level chain of
 5 distribution, passing on monopoly overcharges is not the exception: it is the rule.”²⁹
 6 Similarly, Professor Jeffrey K. MacKie-Mason (Arthur W. Burks Professor for Information
 7 and Computer Science and Professor of Economics and Public Certification), an economist
 8 who presented evidence in a number of indirect purchaser cases, said:

9 As is well known in economic theory and practice, at least some of the
 10 overcharge will be passed on by distributors to end consumers. When
 11 the distribution markets are highly competitive, as they are here, all or
 12 nearly the entire overcharge will be passed on through to ultimate
 consumers This general phenomenon of cost pass through is well
 established in antitrust laws and economics as well.

13 77. The FTC concurs in its complaint. It states at paragraph 1 of its complaint that
 14 “Qualcomm has engaged in exclusionary conduct that taxes its competitors’ baseband
 15 processor sales, reduces competitors’ ability and incentive to innovate, and raises prices paid
 16 by consumers for cell phones and tablets.” Likewise, at paragraph 63 of its complaint, the
 17 FTC says that “[t]he policy skews Qualcomm’s license negotiations with OEMs [Original
 18 Equipment Manufacturers] toward outcomes that raise the all-in prices that OEMs must pay
 19 on both Qualcomm baseband processors and those supplied by Qualcomm’s competitors.
 20 These higher all-in prices reduce demand for competitors’ processors and raise handset prices
 21 paid by consumers.” Similarly, at paragraph 87 of its complaint, the FTC observed that “[t]he
 22 incremental royalty that OEMs pay to Qualcomm operates as a ‘tax’ that raises OEMs’ costs
 23 of using baseband processors supplied by Qualcomm’s competitors, reduces demand for
 24 competitors’ processors, and reduces the ability and incentive of competitors to invest and
 25 innovate. The tax thereby maintains Qualcomm’s monopoly power and raises handset prices
 26 paid by consumers.” And at paragraph 95 of its complaint, the FTC noted that as a result of
 27

28 ²⁹ RG Harris & LA Sullivan, *Passing-On the Monopoly Overcharge: A Comprehensive Policy Analysis*, 128 U. PA. L. REV. 269, 276 (1979).

1 this “tax,” “OEMs likely pass some portion of these higher prices on to consumers in the form
 2 of higher handset prices or reduced handset features.”

3 78. If Qualcomm was forced to stop abusing its monopoly power and charge a fair
 4 and reasonable royalty, consumers would receive better prices when purchasing cellular
 5 devices.

6 79. The precise amount of the overcharge impacting the prices of cellular devices
 7 purchased by consumers is measureable through commonly accepted statistical and regression
 8 modeling.

9 **VI. MARKET DEFINITION**

10 80. The relevant geographic market for purposes of this action is the United States
 11 and its territories.

12 81. The relevant product markets are: (1) the market for CDMA-based and
 13 premium LTE modem chipsets (“Modem Chipset Market”), also known as baseband
 14 processors, which allow cellular devices to communicate with wireless networks and
 15 (2) intellectual property rights associated with SEPs (“SEP Licensing Market”). These two
 16 products – modem chipsets and SEP licenses – will be referred to collectively as the “Cellular
 17 Device Components” as both SEPs and modem chipsets are necessary components of the
 18 relevant cellular devices in this case which implement CDMA-based and/or premium LTE
 19 technologies (hereafter, the “Relevant Cellular Devices”)

20 82. Qualcomm directly participates in the market for the sale of the Relevant
 21 Cellular Devices to Plaintiffs and proposed class members by encumbering those devices
 22 through its licenses and related royalties. Specifically, Qualcomm’s royalty payments are
 23 calculated as a percentage of the wholesale price of the Relevant Cellular Devices, which in
 24 turn increases the retail price of those devices. In other words, Qualcomm licenses
 25 technology essential to the operation of cellular devices and obtains monopoly rents tied
 26 directly to the entire wholesale price of the Relevant Cellular Devices. The effect of
 27 Qualcomm’s anticompetitive conduct is thus targeted at the cellular device as a whole and not
 28 components thereof. Accordingly, because Qualcomm royalties are based on the wholesale

1 selling price of complete licensed products, the patent rights owned by Qualcomm are
 2 inextricably intertwined with the Relevant Cellular Devices themselves. As a result,
 3 Qualcomm's anticompetitive acts, as alleged herein, directly distorted the price of the
 4 Relevant Cellular Devices paid by Plaintiffs.

5 83. Relatedly, Plaintiffs may not use the Relevant Cellular Devices without the
 6 licenses provided by Qualcomm. In the absence of the licenses, as recognized by federal
 7 courts, Qualcomm has standing to sue any indirect users—not just direct infringers—of
 8 cellular devices infringing on its patent rights.

9 84. Plaintiffs' injuries are also inextricably intertwined with Qualcomm's
 10 anticompetitive conduct with respect to modem chipsets and abuse of patent rights because it
 11 has increased the cost to them of purchasing the Relevant Cellular Devices by, among other
 12 things, (1) eliminating competition, (2) allowing Qualcomm to charge supracompetitive prices
 13 for its chipsets and licenses, and (3) forcing device manufacturers to agree to onerous
 14 licensing terms (with unreasonable royalties).

15 **VI. CLASS ACTION ALLEGATIONS**

16 85. Plaintiffs bring this action on behalf of themselves and as a class action under
 17 Rule 23(a) and (b)(2), of the Federal Rules of Civil Procedure, seeking equitable and
 18 injunctive relief, as well as under Rule 23(b)(3) for monetary relief under California law, on
 19 behalf of the following class (the "Nationwide Class"):

20 All persons and entities in the United States who purchased, paid and/or
 21 provided reimbursement for some or all of the purchase price for
 22 CDMA-based and/or premium LTE cellular devices ("Relevant
 23 Cellular Devices") from January 17, 2013 through the present. This
 24 class excludes: (a) Defendant, its officers, directors, management,
 25 employees, subsidiaries, and affiliates; (b) all federal and state
 26 governmental entities except for those who have purchased Relevant
 27 Cellular Devices; (c) all persons or entities who purchased Relevant
 28 Cellular Devices for purposes of resale or directly from Defendant; (d)
 29 any judges or justices involved in this action and any members of their
 30 immediate families or their staff.

31 86. Alternatively to the claim for nationwide monetary relief under California law,
 32 Plaintiffs also bring this action on behalf of themselves and as a class action under Rule 23(a)

1 and (b)(3) of the Federal Rules of Civil Procedure seeking damages or monetary relief
 2 pursuant to the common law of unjust enrichment and individual state antitrust, unfair
 3 competition, and consumer protection laws for each of the states listed below (the “Indirect
 4 Purchaser States”)³⁰ on behalf of the following class (the “Damages Class”):

5 All persons and entities in the United States who purchased, paid and/or
 6 provided reimbursement for some or all of the purchase price for
 7 CDMA-based, and/or premium LTE cellular devices (“Relevant
 8 Cellular Devices”) from January 17, 2013 through the present. This
 9 class excludes: (a) Defendant, its officers, directors, management,
 10 employees, subsidiaries, and affiliates; (b) all federal and state
 11 governmental entities except for those who have purchased Relevant
 12 Cellular Devices; (c) all persons or entities who purchased Relevant
 13 Cellular Devices for purposes of resale or directly from Defendant; (d)
 14 any judges or justices involved in this action and any members of their
 15 immediate families or their staff.

16 87. The Nationwide Class and the Damages Class are referred to herein as the
 17 “Classes.”

18 88. While Plaintiffs do not know the exact number of the members of the Classes,
 19 Plaintiffs believe there are millions of members in each Class.

20 89. Common questions of law and fact exist as to all members of the Classes. This
 21 is particularly true given the nature of Qualcomm’s conduct to acquire and maintain
 22 monopoly power, which was and is generally applicable to all the members of both Classes,
 23 thereby making appropriate relief with respect to the Classes as a whole. Such questions of
 24 law and fact common to the Classes include, but are not limited to:

- 25 • Whether Qualcomm possessed monopoly power over the Cellular Device
 26 Components in the United States during the Class Period;
- 27 • Whether Qualcomm willfully acquired or maintained monopoly power
 28 over the Cellular Device Components in the United States during the Class
 29 Period;

30 The “Indirect Purchaser States” consist of Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Iowa, Kansas, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia and Wisconsin.

- 1 • Whether Qualcomm possessed monopoly power in the Modem Chipset
2 Market (a critical market underlying the Cellular Device Components) in
3 the United States during the Class Period;
- 4 • Whether Qualcomm attempted to possess monopoly power in the Modem
5 Chipset Market (a critical market underlying the Cellular Device
6 Components) in the United States during the Class Period;
- 7 • Whether Qualcomm possessed monopoly power in the SEP Licensing
8 Market (a critical market underlying the Cellular Device Components) in
9 the United States during the Class Period;
- 10 • Whether Qualcomm attempted to possess monopoly power in the SEP
11 Licensing Market (a critical market underlying the Cellular Device
12 Components) in the United States during the Class Period;
- 13 • Whether Qualcomm tied the sale of its CDMA- and premium LTE- based
14 chipsets to the purchase of license rights to its patent portfolio (including
15 SEPs and non-SEPs);
- 16 • Whether Qualcomm tied the sale of its SEPs with the purchase of its non-
17 SEPs;
- 18 • Whether Qualcomm's acquisition and maintenance of its monopolies in the
19 Cellular Device Components violated Sections 2 and 3(b) of the Sherman
20 Act, as alleged in the First Claim for Relief;
- 21 • Whether Qualcomm's conduct violated California's Cartwright Act, Cal.
22 Bus. & Prof. Code §§ 16700, *et seq.*, as alleged in the Second Claim for
23 Relief;
- 24 • Whether Qualcomm's conduct violated state antitrust and unfair
25 competition laws, and/or state consumer protection laws, as alleged in the
26 Third and Fourth Claims for Relief;
- 27 • Whether Qualcomm unjustly enriched itself to the detriment of the
28 Plaintiffs and the members of the Classes, thereby entitling Plaintiffs and
 the members of the Classes to disgorgement of all benefits derived by
 Qualcomm, as alleged in the Fifth Claim for Relief;
- Whether the conduct of Qualcomm, as alleged in this Complaint, caused
 injury to the business or property of Plaintiffs and the members of the
 Classes;
- The effect of Qualcomm's unlawful conduct on the prices of Relevant
 Cellular Devices sold in the United States and its territories during the
 Class Period;

1 • The appropriate injunctive and related equitable relief for the Nationwide
 2 Class; and
 3 • The appropriate class-wide measure of damages for the Damages Class.

4 90. Plaintiffs' claims are typical of the claims of the members of the Classes, and
 5 Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs and all
 6 members of the Classes are similarly affected by Qualcomm's wrongful conduct in that they
 7 paid artificially inflated prices for purchased indirectly from Qualcomm.

8 91. Plaintiffs' claims arise out of the same common course of conduct giving rise
 9 to the claims of the other members of the Classes. Plaintiffs' interests are coincident with,
 10 and not antagonistic to, those of the other members of the Classes. Plaintiffs are represented
 11 by counsel who are competent and experienced in the prosecution of antitrust and class action
 12 litigation.

13 92. The questions of law and fact common to the members of the Classes
 14 predominate over any questions affecting only individual members, including legal and
 15 factual issues relating to liability and damages.

16 93. Class action treatment is a superior method for the fair and efficient
 17 adjudication of the controversy, in that, among other things, such treatment will permit a large
 18 number of similarly situated persons to prosecute their common claims in a single forum
 19 simultaneously, efficiently and without the unnecessary duplication of evidence, effort and
 20 expense that numerous individual actions would engender. The benefits of proceeding
 21 through the class mechanism, including providing injured persons or entities with a method
 22 for obtaining redress for claims that it might not be practicable to pursue individually,
 23 substantially outweigh any difficulties that may arise in management of this class action.

24 94. The prosecution of separate actions by individual members of the Classes
 25 would create a risk of inconsistent or varying adjudications, establishing incompatible
 26 standards of conduct for Defendant.

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28 //

1 **VIII. CLAIMS AND PRAYER FOR RELIEF**2 **FIRST CLAIM FOR RELIEF**3 **Monopolization in Violation of Sections 2 and 3(b) of the Sherman Act**

4 95. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

5 96. Qualcomm's conduct, as alleged herein, constitutes unlawful monopolization
6 of the Cellular Device Components, in violation of Section 2 of the Sherman Act (15 U.S.C.
7 § 2), as well as Section 3(b) of Sherman Act (15 U.S.C. § 3(b)).8 97. General antitrust principles apply to conduct involving intellectual property is
9 the same way that they apply to conduct involving any other form of property.10 98. Market power is the ability profitably to maintain prices above, or output
11 below, competitive levels for a significant period of time. Monopoly power is the ability to
12 control prices and exclude competition in a given market. If a firm can profitably raise prices
13 without causing competing firms to expand output and drive down prices, that firm has
14 monopoly power.15 99. Qualcomm has monopoly power in the Modem Chipset Market. First, it has
16 maintained high and durable market shares in this market. Qualcomm controls the CDMA
17 chipset supply, historically controlling over 90% of the CDMA modem chipset market, and at
18 the lowest point still controlling 83% of this market. Qualcomm also controls the Modem
19 Chipset Market for LTE-based chipsets, controlling at relevant times up to 90% of the market,
20 and today over 60% of the market. Qualcomm still exclusively supplies multimode CDMA-
21 LTE chipsets that are backward compatible with CDMA. Second, there are substantial
22 barriers to entry. CDMA- and premium LTE- based technologies are not interchangeable
23 with or substitutable for other technologies, and adherents to these technologies and their
24 related standards have become locked-in. Qualcomm also controls the patents, including
25 SEPs, underlying CDMA-based technologies, and Qualcomm maintained this monopoly by,
26 among other things, refusing to license to competitors and requiring purchasers of its chipsets
27 to agree to its licenses for its patent portfolio. Third, and relatedly, Qualcomm's monopoly
28 power is shown by its demonstrated ability to repeatedly force device manufacturers to accept

1 one-sided, unreasonable supply terms. Among other things, Qualcomm has used its control
 2 over the CDMA chipset supply to require purchasers to agree to its license agreements and
 3 related terms, including excessively high royalty terms.

4 100. Qualcomm also has monopoly power over the SEP Licensing Market. SSOs
 5 have selected standards based on technology for which Qualcomm owns the patents (based on
 6 the condition that Qualcomm would supply its technology on FRAND terms). As to market
 7 share, Qualcomm holds virtually all of the SEPs—the essential patents—for CDMA standard-
 8 based technologies, which underlie virtually all 3G devices and 4G-LTE devices which are
 9 3G-compatible. Qualcomm has licensed its patent portfolio for 3G cellular technologies to
 10 more than 200 licensees. As these patents are “essential” to the particular standards that
 11 implement them, other patents and patented technology cannot replace or serve as an
 12 alternative for Qualcomm’s patents. Qualcomm’s market power over the SEP Licensing
 13 Market is further demonstrated by Qualcomm’s ability to leverage its control of its patents to
 14 force device manufacturers to agree to unfair and unreasonable license agreements and terms,
 15 including excessive royalties. Because these manufacturers need to use Qualcomm’s
 16 technology for their devices to communicate with the major carrier networks, they are forced
 17 to agree to Qualcomm’s unfair and unreasonable licensing terms.

18 101. As indicated, Qualcomm has acquired and maintained of its market power in
 19 the Cellular Device Components (based on the modem chipsets and SEPs which underlie and
 20 are incorporated into all the Relevant Cellular Devices), and it has done so through
 21 anticompetitive means, including, but not limited to excluding competition and demanding
 22 non-FRAND terms from licensees.

23 102. Qualcomm thus holds market power over the Cellular Device Components
 24 because it can encumber Relevant Cellular Devices with a royalty of its choice without other
 25 firms competing to drive down these prices. Specifically, Qualcomm’s control over the
 26 Cellular Device Components has allowed it to force license agreements on its competitors and
 27 devices manufacturers, and those licenses allow Qualcomm to charge royalties of between
 28 three to five percent (3-5%) of the wholesale price of the completed device. In other words,

1 each Relevant Cellular Device sold with or based on Qualcomm technology is also
2 encumbered by Qualcomm's excessive royalties, which in turn increase the cost of the device
3 for consumers like Plaintiffs and members of the proposed Classes.

4 103. There is no procompetitive justification for the anticompetitive conduct in
5 which Qualcomm has engaged. Qualcomm induced SSOs to use its technology and related
6 patents in setting their standards on the promise that it would adhere to FRAND obligations.
7 In doing so, other alternative (and potentially superior) technologies were not utilized by
8 SSOs. But Qualcomm has not met its FRAND obligations, and instead, has abused its
9 monopoly power over the Cellular Device Components to force device manufacturers into
10 licenses with unfair and unreasonable terms, including, but not limited to, excessively high
11 royalty rates based on the selling price of the completed device rather than the value of
12 Qualcomm's contribution to that device. Qualcomm's acts have also likely harmed the
13 development of cellular technology, as it forced out competitors, thus reducing innovation and
14 competitive pricing.

15 104. Plaintiffs and members of the proposed Classes were harmed as a direct result
16 of Qualcomm's conduct, which increased the purchase price of their Relevant Cellular
17 Devices. Additionally, Qualcomm's conduct harmed innovation and competition, which
18 harmed Plaintiffs in the quality and price of their Relevant Cellular Devices.

SECOND CLAIM FOR RELIEF

Nationwide Claim For Violation of the Cartwright Act,

Cal. Bus. & Prof. Code §§ 16700, *et seq.*

22 105. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

23 106. During the Class Period, Qualcomm engaged in monopolistic and
24 anticompetitive conduct in unreasonable restraint of trade and commerce and in violation of
25 California Business and Professions Code sections 16700, *et seq.* While Section 16700 does
26 not reach solely unilateral conduct by a monopolist, it encompasses agreements between a
27 monopolist and its customers where the monopolist effectively coerces the customer to accede
28 to the restraint in order to obtain the good or service that is the subject of the agreement. That

1 is what happened here. Despite its FRAND obligations, Qualcomm unilaterally imposed
2 royalty rates that were unreasonable and exceeded what it could have obtained in a true
3 FRAND negotiation. This conduct constitutes a “combination” under the Cartwright Act.

4 107. Qualcomm established an unlawful scheme by which it acquired and
5 maintained monopoly power over the Cellular Device Components through anticompetitive
6 means, including by excluding competition.

7 108. The Relevant Cellular Devices are commodities.

8 109. As a direct result of Qualcomm's unlawful conduct, Plaintiffs and the Class
9 were overcharged when they purchased their Relevant Cellular Devices.

10 110. It is appropriate to apply California antitrust law to the Nationwide Class.
11 Qualcomm is headquartered in California, and Qualcomm subjected its competitors as well as
12 device manufacturers that reside and do business in California to its unlawful conduct. In
13 doing so, Qualcomm reaped a significant portion of its profits as a result of its unlawful
14 scheme from companies doing business in California. Additionally, California is the most
15 populous state in the country, for which it was foreseeable that substantial number of
16 California consumers would be impacted by Qualcomm's unlawful behavior.

THIRD CLAIM FOR RELIEF

Nationwide Claim For Violations of Unfair Competition Law,

Cal. Bus. & Prof. Code §§ 17200, *et seq.*

20 111. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

21 112. Qualcomm's conduct constitutes a violation of California's Unfair
22 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, which protects consumers from
23 illegal, fraudulent and unfair business practices.

24 113. Plaintiffs bring this claim on behalf of themselves, the Damages Class, and on
25 behalf of the public as private attorneys general pursuant to Cal. Bus. & Prof. Code § 17204.

26 114. As discussed above, Qualcomm's conduct constitutes violations of the
27 Sherman Act and the Cartwright Act. As such, Qualcomm's acts constitute unlawful conduct
28 under section 17200. Qualcomm unlawfully acquired and maintained its monopoly over the

1 Cellular Device Components through anticompetitive conduct, including, among other things,
2 excluding competitors by refusing to license its technology to them, engaging in exclusive
3 dealing arrangements with its customers to keep out competitors, and forcing device
4 manufacturers to license its patent portfolio.

5 115. Qualcomm's conduct was deceptive because it induced SSOs to use its
6 technology on the promise it would comply with FRAND. But after SSOs selected
7 Qualcomm's technology for their standards, Qualcomm refused to comply with its FRAND
8 promises.

9 116. Qualcomm's conduct is also unfair to Plaintiffs and members of the proposed
10 Classes because as a direct result of its acts described above, Plaintiffs were charged more for
11 their Relevant Cellular Devices than they would have but for Qualcomm's conduct.

12 117. Plaintiffs on behalf of themselves and the proposed Classes seek and are
13 entitled to all forms of relief available under California's Unfair Competition Law, including
14 but not limited to restitution and disgorgement from Qualcomm of all earnings, profits,
15 compensation, benefits and other ill-gotten gains obtained as a result of its conduct in
16 violation of Business & Professions Code § 17200 *et seq.*

17 118. It is appropriate to apply California antitrust law to the Nationwide Class.
18 Qualcomm is headquartered in California, and Qualcomm subjected its competitors as well as
19 device manufacturers that reside in California to its unlawful conduct. In doing so,
20 Qualcomm reaped a significant portion of its profits as a result of its unlawful scheme from
21 companies doing business in California. Additionally, California is the most populous state in
22 the country, for which it was foreseeable that substantial number of California consumers
23 would be impacted by Qualcomm's unlawful behavior.

FOURTH CLAIM FOR RELIEF

Violations of State Antitrust and Restraint of Trade Laws

26 119. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

1 120. In the event that the Court does not apply California law on a nationwide basis,
 2 Plaintiffs allege the following violations of state antitrust and restraint of trade laws in the
 3 alternative.

4 121. Defendant Qualcomm's anticompetitive acts described above were knowing,
 5 willful, and constitute violations or flagrant violations of the following state antitrust statutes.

6 122. Arizona: Qualcomm's monopolization and anticompetitive conduct has
 7 restrained trade in violation of Arizona Revised Statutes §§ 44-1401, *et seq.* During the Class
 8 Period, Qualcomm's illegal conduct substantially affected Arizona commerce. As a direct
 9 and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 10 Damages Class have been injured in their business and property and are threatened with
 11 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 12 violation of Ariz. Rev. Stat. §§ 44-1401, *et seq.* Accordingly, Plaintiffs and members of the
 13 Damages Class seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

14 123. California: During the Class Period, Qualcomm engaged in monopolistic and
 15 anticompetitive conduct in unreasonable restraint of trade and commerce and in violation of
 16 California Business and Professions Code sections 16700, *et seq.* While Section 16700 does
 17 not reach solely unilateral conduct by a monopolist, it encompasses agreements between a
 18 monopolist and its customers where the monopolist effectively coerces the customer to accede
 19 to the restraint in order to obtain the good or service that is the subject of the agreement. That
 20 is what happened here. Despite its FRAND obligations, Qualcomm unilaterally imposed
 21 royalty rates that were unreasonable and exceeded what it could have obtained in a true
 22 FRAND negotiation. This conduct constitutes a "combination" under the Cartwright Act.

23 124. Qualcomm established an unlawful scheme by which it acquired and
 24 maintained monopoly power in the Cellular Device Components through anticompetitive
 25 means, including by excluding competition.

26 125. The Relevant Cellular Devices are commodities.

27 126. As a direct result of Qualcomm's unlawful conduct, Plaintiffs and the Class
 28 were overcharged when they purchased their Relevant Cellular Devices.

1 127. District of Columbia: Qualcomm's monopolization and anticompetitive
 2 conduct has restrained trade in violation of District of Columbia Code Annotated §§ 28-4501,
 3 *et seq.* During the Class Period, Qualcomm's illegal conduct substantially affected District of
 4 Columbia commerce. As a direct and proximate result of Qualcomm's unlawful conduct,
 5 Plaintiffs and members of the Damages Class have been injured in their business and property
 6 and are threatened with further injury. By reason of the foregoing, Qualcomm has
 7 monopolized in restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501,
 8 *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief
 9 available under District of Columbia Code Ann. §§ 28-4501, *et seq.*

10 128. Illinois: Qualcomm's monopolization and anticompetitive conduct has
 11 restrained trade in violation of the Illinois Antitrust Act (740 Illinois Compiled Statutes 10/1,
 12 *et seq.*). During the Class Period, Qualcomm's illegal conduct substantially affected Illinois
 13 commerce. As a direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and
 14 members of the Damages Class have been injured in their business and property and are
 15 threatened with further injury. By reason of the foregoing, Qualcomm has monopolized in
 16 restraint of trade in violation of the Illinois Antitrust Act (740 Illinois Compiled Statutes 10/1,
 17 *et seq.*). Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief
 18 available under District of the Illinois Antitrust Act (740 Illinois Compiled Statutes 10/1, *et*
 19 *seq.*).

20 129. Iowa: Qualcomm's monopolization and anticompetitive conduct has restrained
 21 trade in violation of Iowa Code §§ 553.1, *et seq.* During the Class Period, Qualcomm's
 22 illegal conduct substantially affected Illinois commerce. As a direct and proximate result of
 23 Qualcomm's unlawful conduct, Plaintiffs and members of the Damages Class have been
 24 injured in their business and property and are threatened with further injury. By reason of the
 25 foregoing, Qualcomm has monopolized in restraint of trade in violation of Iowa Code §§
 26 553.1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of
 27 relief available under Iowa Code §§ 553, *et seq.*

28

1 130. Kansas: Qualcomm's monopolization and anticompetitive conduct has
 2 restrained trade in violation of Defendant has entered into an unlawful agreement in restraint
 3 of trade in violation of Kansas Statutes Annotated, §§ 50-101, *et seq.* During the Class
 4 Period, Qualcomm's illegal conduct substantially affected Kansas commerce. As a direct and
 5 proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the Damages
 6 Class have been injured in their business and property and are threatened with further injury.
 7 By reason of the foregoing, Qualcomm has monopolized in restraint of trade in violation of
 8 Kansas Stat. Ann. §§ 50-101, *et seq.* Accordingly, Plaintiffs and members of the Damages
 9 Class seek all forms of relief available under Kansas Stat. Ann. §§ 50-101, *et seq.*

10 131. Maine: Qualcomm's monopolization and anticompetitive conduct has
 11 restrained trade in violation of Maine Revised Statutes (Maine Rev. Stat. Ann. 10, §§ 1101, *et*
 12 *seq.*). During the Class Period, Qualcomm's illegal conduct substantially affected Maine
 13 commerce. As a direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and
 14 members of the Damages Class have been injured in their business and property and are
 15 threatened with further injury. By reason of the foregoing, Qualcomm has monopolized in
 16 restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.* Accordingly,
 17 Plaintiffs and members of the Damages Class seek all relief available under Maine Rev. Stat.
 18 Ann. 10, §§ 1101, *et seq.*

19 132. Michigan: Qualcomm's monopolization and anticompetitive conduct has
 20 restrained trade in violation of Michigan Compiled Laws Annotated §§ 445.771, *et seq.*
 21 During the Class Period, Qualcomm's illegal conduct substantially affected Michigan
 22 commerce. As a direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and
 23 members of the Damages Class have been injured in their business and property and are
 24 threatened with further injury. By reason of the foregoing, Qualcomm has monopolized in
 25 restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq.* Accordingly,
 26 Plaintiffs and members of the Damages Class seek all relief available under Michigan Comp.
 27 Laws Ann. §§ 445.771, *et seq.*

28

1 133. Minnesota: Qualcomm's monopolization and anticompetitive conduct has
 2 restrained trade in violation of Minnesota Annotated Statutes §§ 325D.49, *et seq.* During the
 3 Class Period, Qualcomm's illegal conduct substantially affected Minnesota commerce. As a
 4 direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 5 Damages Class have been injured in their business and property and are threatened with
 6 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 7 violation of Minnesota Stat. §§ 325D.49, *et seq.* Accordingly, Plaintiffs and members of the
 8 Damages Class seek all relief available under Minnesota Stat. §§ 325D.49, *et seq.*

9 134. Mississippi: Qualcomm's monopolization and anticompetitive conduct has
 10 restrained trade in violation of Mississippi Code Annotated §§ 75-21-1, *et seq.* During the
 11 Class Period, Qualcomm's illegal conduct substantially affected Mississippi commerce. As a
 12 direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 13 Damages Class have been injured in their business and property and are threatened with
 14 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 15 violation of Mississippi Code Ann. § 75-21-1, *et seq.* Accordingly, Plaintiffs and members of
 16 the Damages Class seek all relief available under Mississippi Code Ann. § 75-21-1, *et seq.*

17 135. Nebraska: Qualcomm's monopolization and anticompetitive conduct has
 18 restrained trade in violation of Nebraska Revised Statutes §§ 59-801, *et seq.* During the Class
 19 Period, Qualcomm's illegal conduct substantially affected Nebraska commerce. As a direct
 20 and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 21 Damages Class have been injured in their business and property and are threatened with
 22 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 23 violation of Nebraska Revised Statutes §§ 59-801, *et seq.* Accordingly, Plaintiffs and
 24 members of the Damages Class seek all relief available under Nebraska Revised Statutes §§
 25 59-801, *et seq.*

26 136. Nevada: Qualcomm's monopolization and anticompetitive conduct has
 27 restrained trade in violation of Nevada Revised Statutes Annotated §§ 598A.010, *et seq.*
 28 During the Class Period, Qualcomm's illegal conduct substantially affected Nevada

1 commerce. As a direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and
 2 members of the Damages Class have been injured in their business and property and are
 3 threatened with further injury. By reason of the foregoing, Qualcomm has monopolized in
 4 restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A, *et seq.* Accordingly,
 5 Plaintiffs and members of the Damages Class seek all relief available under Nevada Rev. Stat.
 6 Ann. §§ 598A, *et seq.*

7 137. New Hampshire: Qualcomm's monopolization and anticompetitive conduct
 8 has restrained trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.* During
 9 the Class Period, Qualcomm's illegal conduct substantially affected New Hampshire
 10 commerce. As a direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and
 11 members of the Damages Class have been injured in their business and property and are
 12 threatened with further injury. By reason of the foregoing, Qualcomm has monopolized in
 13 restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.*
 14 Accordingly, Plaintiffs and members of the Damages Class seek all relief available under
 15 New Hampshire Revised Statutes §§ 356:1, *et seq.*

16 138. New Mexico: Qualcomm's monopolization and anticompetitive conduct has
 17 restrained trade in violation of New Mexico Statutes Annotated §§ 57-1-1, *et seq.* During the
 18 Class Period, Qualcomm's illegal conduct substantially affected New Mexico commerce. As
 19 a direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 20 Damages Class have been injured in their business and property and are threatened with
 21 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 22 violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.* Accordingly, Plaintiffs and members
 23 of the Damages Class seek all relief available under New Mexico Stat. Ann. §§ 57-1-1, *et seq.*

24 139. New York: Qualcomm's monopolization and anticompetitive conduct has
 25 restrained trade in violation of New York General Business Laws §§ 340, *et seq.* During the
 26 Class Period, Qualcomm's illegal conduct substantially affected New York commerce. As a
 27 direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 28 Damages Class have been injured in their business and property and are threatened with

1 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 2 violation of the New York Donnelly Act, §§ 340, *et seq.* Accordingly, Plaintiffs and members
 3 of the Damages Class seek all relief available under New York Gen. Bus. Law §§ 340, *et seq.*

4 140. North Carolina: Qualcomm's monopolization and anticompetitive conduct has
 5 restrained trade in violation of the North Carolina General Statutes §§ 75-1, *et seq.* During
 6 the Class Period, Qualcomm's illegal conduct substantially affected North Carolina
 7 commerce. As a direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and
 8 members of the Damages Class have been injured in their business and property and are
 9 threatened with further injury. By reason of the foregoing, Qualcomm has monopolized in
 10 restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq.* Accordingly,
 11 Plaintiffs and members of the Damages Class seek all relief available under North Carolina
 12 Gen. Stat. §§ 75-1, *et seq.*

13 141. North Dakota: Qualcomm's monopolization and anticompetitive conduct has
 14 restrained trade in violation of North Dakota Century Code §§ 51-08.1-01, *et seq.* During the
 15 Class Period, Qualcomm's illegal conduct substantially affected North Dakota commerce. As
 16 a direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 17 Damages Class have been injured in their business and property and are threatened with
 18 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 19 violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq.* Accordingly, Plaintiffs and
 20 members of the Damages Class seek all relief available under North Dakota Cent. Code §§
 21 51-08.1-01, *et seq.*

22 142. Oregon: Qualcomm's monopolization and anticompetitive conduct has
 23 restrained trade in violation of Oregon Revised Statutes §§ 646.705, *et seq.* During the Class
 24 Period, Qualcomm's illegal conduct substantially affected Oregon commerce. As a direct and
 25 proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the Damages
 26 Class have been injured in their business and property and are threatened with further injury.
 27 By reason of the foregoing, Qualcomm has monopolized in restraint of trade in violation of
 28

1 Oregon Revised Statutes §§ 646.705, *et seq.* Accordingly, Plaintiffs and members of the
 2 Damages Class seek all relief available under Oregon Revised Statutes §§ 646.705, *et seq.*

3 143. South Dakota: Qualcomm's monopolization and anticompetitive conduct has
 4 restrained trade in violation of South Dakota Codified Laws §§ 37-1-3.1, *et seq.* During the
 5 Class Period, Qualcomm's illegal conduct substantially affected South Dakota commerce. As
 6 a direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 7 Damages Class have been injured in their business and property and are threatened with
 8 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 9 violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq.* Accordingly, Plaintiffs and
 10 members of the Damages Class seek all relief available under South Dakota Codified Laws
 11 Ann. §§ 37-1, *et seq.*

12 144. Tennessee: Qualcomm's monopolization and anticompetitive conduct has
 13 restrained trade in violation of Tennessee Code Annotated §§ 47-25-101, *et seq.* During the
 14 Class Period, Qualcomm's illegal conduct substantially affected Tennessee commerce. As a
 15 direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 16 Damages Class have been injured in their business and property and are threatened with
 17 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 18 violation of Tennessee Code Ann. §§ 47-25-101, *et seq.* Accordingly, Plaintiffs and members
 19 of the Damages Class seek all relief available under Tennessee Code Ann. §§ 47-25-101, *et
 20 seq.*

21 145. Utah: Qualcomm's monopolization and anticompetitive conduct has restrained
 22 trade in violation of Utah Code Annotated §§ 76-10-911, *et seq.* During the Class Period,
 23 Qualcomm's illegal conduct substantially affected Utah commerce. As a direct and proximate
 24 result of Qualcomm's unlawful conduct, Plaintiffs and members of the Damages Class have
 25 been injured in their business and property and are threatened with further injury. By reason
 26 of the foregoing, Qualcomm has monopolized in restraint of trade in violation of Utah Code
 27 Annotated §§ 76-10-911, *et seq.* Accordingly, Plaintiffs and members of the Damages Class
 28 seek all relief available under Utah Code Annotated §§ 76-10-911, *et seq.*

1 146. Vermont: Qualcomm's monopolization and anticompetitive conduct has
 2 restrained trade in violation of Vermont Stat. Ann. 9 §§ 2453, *et seq.* During the Class
 3 Period, Qualcomm's illegal conduct substantially affected Vermont commerce. As a direct
 4 and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 5 Damages Class have been injured in their business and property and are threatened with
 6 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 7 violation of Vermont Stat. Ann. 9 §§ 2453, *et seq.* Accordingly, Plaintiffs and members of
 8 the Damages Class seek all relief available under Vermont Stat. Ann. 9 §§ 2453, *et seq.*

9 147. West Virginia: Qualcomm's monopolization and anticompetitive conduct has
 10 restrained trade in violation of West Virginia Code §§ 47-18-1, *et seq.* During the Class
 11 Period, Qualcomm's illegal conduct substantially affected West Virginia commerce. As a
 12 direct and proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the
 13 Damages Class have been injured in their business and property and are threatened with
 14 further injury. By reason of the foregoing, Qualcomm has monopolized in restraint of trade in
 15 violation of West Virginia Code §§ 47-18-1, *et seq.* Accordingly, Plaintiffs and members of
 16 the Damages Class seek all relief available under West Virginia Code §§ 47-18-1, *et seq.*

17 148. Wisconsin: Qualcomm's monopolization and anticompetitive conduct has
 18 restrained trade in violation of Wisconsin Statutes §§ 133.01, *et seq.* During the Class Period,
 19 Qualcomm's illegal conduct substantially affected Wisconsin commerce. As a direct and
 20 proximate result of Qualcomm's unlawful conduct, Plaintiffs and members of the Damages
 21 Class have been injured in their business and property and are threatened with further injury.
 22 By reason of the foregoing, Qualcomm has monopolized in restraint of trade in violation of
 23 Wisconsin Stat. §§ 133.01, *et seq.* Accordingly, Plaintiffs and members of the Damages Class
 24 seek all relief available under Wisconsin Stat. §§ 133.01, *et seq.*

25 149. Plaintiffs and members of the Damages Class in each of the above states have
 26 been injured in their business and property by reason of Qualcomm's unlawful
 27 monopolization. Plaintiffs and members of the Damages Class have paid more for Relevant
 28 Cellular Devices than they otherwise would have paid in the absence of Qualcomm's

1 unlawful conduct. This injury is of the type the antitrust laws of the above states were
2 designed to prevent and flows from that which makes Qualcomm's conduct unlawful.

3 150. In addition, Qualcomm has profited significantly from the aforesaid
4 monopolization. Qualcomm's profits derived from their anticompetitive conduct come at the
5 expense and detriment of Plaintiffs and members of the Damages Class.

6 151. Accordingly, Plaintiffs and members of the Damages Class in each of the
7 above jurisdictions seek damages (including statutory damages where applicable), to be
8 trebled or otherwise increased as permitted by a particular jurisdiction's antitrust law, and
9 costs of suit, including reasonable attorneys' fees, to the extent permitted by the above state
10 laws.

FIFTH CLAIM FOR RELIEF

Violation of State Consumer Protection Statutes

13 152. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

14 153. In the event that the Court does not apply California law on a nationwide basis,
15 Plaintiffs allege the following violations of state antitrust and restraint of trade laws in the
16 alternative.

17 154. Qualcomm engaged in unfair competition or unfair, unconscionable, deceptive
18 or fraudulent acts or practices in violation of the state consumer protection and unfair
19 competition statutes listed below.

20 155. Arkansas: Qualcomm has monopolized through unfair, unconscionable, and/or
21 deceptive practices in violation of the Arkansas Code Annotated, § 4-88-101, *et. seq.*
22 Qualcomm knowingly acted in restraint of trade or commerce by affecting, fixing, controlling,
23 and/or maintaining at non-competitive and artificially inflated levels, the prices at which
24 Relevant Cellular Devices were sold, distributed, or obtained in Arkansas. The
25 aforementioned conduct on the part of Qualcomm constituted “unconscionable” and
26 “deceptive” acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10).
27 Qualcomm’s unlawful conduct had the following effects: (1) price competition for the
28 Cellular Device Components restrained, suppressed, and eliminated throughout Arkansas; (2)

1 Relevant Cellular Devices prices were raised, fixed, maintained, and stabilized at artificially
 2 high levels throughout Arkansas; (3) Plaintiffs and members of the Damages Class were
 3 deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class
 4 paid supracompetitive, artificially inflated prices for Relevant Cellular Devices. During the
 5 Class Period, Qualcomm's illegal conduct substantially affected Arkansas commerce and
 6 consumers. As a direct and proximate result of the unlawful conduct of Qualcomm, Plaintiffs
 7 and members of the Damages Class have been injured in their business and property and are
 8 threatened with further injury. Qualcomm has engaged in unfair competition or unfair or
 9 deceptive acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10) and,
 10 accordingly, Plaintiffs and members of the Damages Class seek all relief available under that
 11 statute.

12 156. California: Qualcomm has engaged in unfair competition or unfair,
 13 unconscionable, deceptive or fraudulent acts or practices in violation of California Business
 14 and Professions Code § 17200, *et seq.* During the Class Period, Qualcomm committed and
 15 continue to commit acts of unfair competition as defined by Sections 17200, *et seq.* of the
 16 California Business and Professions Code, by engaging in the acts and practices specified
 17 above. This claim is instituted pursuant to Sections 17203 and 17204 of the California
 18 Business and Professions Code, to obtain restitution from Qualcomm for acts, as alleged
 19 herein, that violated Section 17200 of the California Business and Professions Code,
 20 commonly known as the Unfair Competition Law. Qualcomm's conduct as alleged herein
 21 violated Section 17200. The acts, omissions, misrepresentations, practices and non-
 22 disclosures of Qualcomm, as alleged herein, constituted a common, continuous, and
 23 continuing course of conduct of unfair competition by means of unfair, unlawful, and/or
 24 fraudulent business acts or practices within the meaning of California Business and
 25 Professions Code §17200, *et seq.*, including, but not limited to, the following: (1) the
 26 violations of the Sherman Act, as set forth above; (2) the violations of Section 16720, *et seq.*
 27 of the California Business and Professions Code, set forth above. The illegal conduct alleged
 28 herein is continuing and there is no indication that Qualcomm will not continue such activity

1 into the future. The unlawful and unfair business practices of Qualcomm, as described above,
2 have caused and continue to cause Plaintiffs and members of the Damages Class to pay
3 supracompetitive and artificially-inflated prices for Relevant Cellular Devices. Plaintiffs and
4 members of the Damages Class suffered injury in fact and lost money or property as a result
5 of such unfair competition. Plaintiffs and members of the Damages Class are accordingly
6 entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings,
7 profits, compensation, and benefits that may have been obtained by Qualcomm as a result of
8 such business practices, pursuant to the California Business and Professions Code, §§ 17203
9 and 17204.

10 157. District of Columbia: Qualcomm has engaged in unfair competition or unfair,
11 unconscionable, or deceptive acts or practices in violation of District of Columbia Code § 28-
12 3901, *et seq.* Qualcomm acted in restraint of trade or commerce by affecting, fixing,
13 controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which
14 Relevant Cellular Devices were sold, distributed or obtained in the District of Columbia. The
15 foregoing conduct constitutes “unlawful trade practices,” within the meaning of D.C. Code §
16 28-3904. The suppression of competition that has resulted from Qualcomm’s conduct has
17 ultimately resulted in unconscionably higher prices for purchasers so that there was a gross
18 disparity between the price paid and the value received for the Relevant Cellular Devices.
19 Qualcomm’s unlawful conduct had the following effects: (1) Relevant Cellular Devices price
20 competition was restrained, suppressed, and eliminated throughout the District of Columbia;
21 (2) Relevant Cellular Devices prices were raised, fixed, maintained, and stabilized at
22 artificially high levels throughout the District of Columbia; (3) Plaintiffs and members of the
23 Damages Class were deprived of free and open competition; and (4) Plaintiffs and members
24 of the Damages Class paid supracompetitive, artificially inflated prices for Relevant Cellular
25 Devices. As a direct and proximate result of Qualcomm’s conduct, Plaintiffs and members of
26 the Damages Class have been injured and are threatened with further injury. Defendant has
27 engaged in unfair competition or unfair or deceptive acts or practices in violation of District
28

1 of Columbia Code § 28-3901, *et seq.*, and, accordingly, Plaintiffs and members of the
 2 Damages Class seek all relief available under that statute.

3 158. Florida: Qualcomm has engaged in unfair competition or unfair,
 4 unconscionable, or deceptive acts or practices in violation of the Florida Deceptive and Unfair
 5 Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.* Qualcomm's unlawful conduct had the
 6 following effects: (1) Relevant Cellular Devices price competition was restrained,
 7 suppressed, and eliminated throughout Florida; (2) Relevant Cellular Devices prices were
 8 raised, fixed, maintained, and stabilized at artificially high levels throughout Florida; (3)
 9 Plaintiffs and members of the Damages Class were deprived of free and open competition;
 10 and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially
 11 inflated prices for Relevant Cellular Devices. During the Class Period, Qualcomm's illegal
 12 conduct substantially affected Florida commerce and consumers. As a direct and proximate
 13 result of Qualcomm's unlawful conduct, Plaintiffs and members of the Damages Class have
 14 been injured and are threatened with further injury. Qualcomm has engaged in unfair
 15 competition or unfair or deceptive acts or practices in violation of Florida Stat. § 501.201, *et*
 16 *seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available
 17 under that statute.

18 159. Missouri: Qualcomm has engaged in unfair competition or unfair,
 19 unconscionable, or deceptive acts or practices in violation of the Missouri Merchandising
 20 Practices Act, Mo. Rev. Stat. § 407.010, *et seq.* Plaintiffs and members of the Damages Class
 21 purchased Relevant Cellular Devices for personal or family purposes. Qualcomm engaged in
 22 the conduct described herein in connection with the sale of Relevant Cellular Devices in trade
 23 or commerce in a market that includes Missouri. Qualcomm affected, fixed, controlled,
 24 and/or maintained, at artificial and non-competitive levels, the prices at which Relevant
 25 Cellular Devices were sold, distributed, or obtained in Missouri, which conduct constituted
 26 unfair practices in that it was unlawful under federal and state law, violated public policy, was
 27 unethical, oppressive and unscrupulous, and caused substantial injury to Plaintiffs and
 28 members of the Damages Class. Qualcomm concealed, suppressed, and omitted to disclose

1 material facts to SSOs concerning its unlawful activities and suppressed, and omitted facts
 2 would have been important to SSOs as they related to selecting Qualcomm's technologies into
 3 their standards. Qualcomm's unlawful conduct had the following effects: (1) price
 4 competition was restrained, suppressed, and eliminated throughout Missouri; (2) prices of
 5 Relevant Cellular Devices were raised, fixed, maintained, and stabilized at artificially high
 6 levels throughout Missouri; (3) Plaintiffs and members of the Damages Class were deprived
 7 of free and open competition; and (4) Plaintiffs and members of the Damages Class paid
 8 supracompetitive, artificially inflated prices for the Relevant Cellular Devices. The foregoing
 9 acts and practices constituted unlawful practices in violation of the Missouri Merchandising
 10 Practices Act. As a direct and proximate result of the above-described unlawful practices,
 11 Plaintiffs and members of the Damages Class suffered ascertainable loss of money or
 12 property. Accordingly, Plaintiffs and members of the Damages Class seek all relief available
 13 under Missouri's Merchandising Practices Act, specifically Mo. Rev. Stat. § 407.020, which
 14 prohibits "the act, use or employment by any person of any deception, fraud, false pretense,
 15 false promise, misrepresentation, unfair practice or the concealment, suppression, or omission
 16 of any material fact in connection with the sale or advertisement of any merchandise in trade
 17 or commerce...," as further interpreted by the Missouri Code of State Regulations, 15 CSR
 18 60-7.010, *et seq.*, 15 CSR 60-8.010, *et seq.*, and 15 CSR 60-9.010, *et seq.*, and Mo. Rev. Stat.
 19 § 407.025, which provides for the relief sought in this count.

20 160. Montana: Qualcomm has engaged in unfair competition or unfair,
 21 unconscionable, or deceptive acts or practices in violation of the Montana Unfair Trade
 22 Practices and Consumer Protection Act of 1970, Mont. Code, §§ 30-14-103, *et seq.*, and §§
 23 30-14-201, *et. seq.* Qualcomm's unlawful conduct had the following effects: (1) price
 24 competition was restrained, suppressed, and eliminated throughout Montana; (2) prices of
 25 Relevant Cellular Devices were raised, fixed, maintained, and stabilized at artificially high
 26 levels throughout Montana; (3) Plaintiffs and members of the Damages Class were deprived
 27 of free and open competition; and (4) Plaintiffs and members of the Damages Class paid
 28 supracompetitive, artificially inflated prices for Relevant Cellular Devices. During the Class

1 Period, Qualcomm's illegal conduct described herein substantially affected Montana
 2 commerce and consumers. As a direct and proximate result of Qualcomm's unlawful
 3 conduct, Plaintiffs and members of the Damages Class have been injured and are threatened
 4 with further injury. Qualcomm has engaged in unfair competition or unfair or deceptive acts
 5 or practices in violation of Mont. Code, §§ 30-14-103, *et seq.*, and §§ 30-14-201, *et seq.*, and,
 6 accordingly, Plaintiffs and members of the Damages Class seek all relief available under that
 7 statute.

8 161. New Mexico: Qualcomm has engaged in unfair competition or unfair,
 9 unconscionable, or deceptive acts or practices in violation of the New Mexico Stat. § 57-12-1,
 10 *et seq.* Qualcomm acted in restraint of trade or commerce by affecting, fixing, controlling
 11 and/or maintaining at non-competitive and artificially inflated levels, the prices at which
 12 Relevant Cellular Devices were sold, distributed or obtained in New Mexico. The
 13 aforementioned conduct on the part of the Defendant constituted "unconscionable trade
 14 practices," in violation of N.M.S.A. Stat. § 57-12-3, in that such conduct, *inter alia*, resulted
 15 in a gross disparity between the value received by Plaintiffs and members of the Damages
 16 Class and the prices paid by them for Relevant Cellular Devices as set forth in N.M.S.A., §
 17 57-12-2E. Qualcomm's conduct with regard to sales of Relevant Cellular Devices, including
 18 their illegal conduct to fix the price of Relevant Cellular Devices at supracompetitive levels,
 19 was substantively unconscionable because it was one-sided and unfairly benefited Defendant
 20 at the expense of Plaintiffs and the public. The suppression of competition that has resulted
 21 from Qualcomm's conduct has ultimately resulted in unconscionably higher prices for
 22 consumers so that there was a gross disparity between the price paid and the value received
 23 for the Relevant Cellular Devices. Qualcomm's unlawful conduct had the following effects:
 24 (1) Relevant Cellular Devices price competition was restrained, suppressed, and eliminated
 25 throughout New Mexico; (2) Relevant Cellular Devices prices were raised, fixed, maintained,
 26 and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and members
 27 of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and
 28 members of the Damages Class paid supracompetitive, artificially inflated prices for Relevant

1 Cellular Devices. During the Class Period, Qualcomm's illegal conduct substantially affected
 2 New Mexico commerce and consumers. As a direct and proximate result of the unlawful
 3 conduct of Qualcomm, Plaintiffs and members of the Damages Class have been injured and
 4 are threatened with further injury. Qualcomm has engaged in unfair competition or unfair or
 5 deceptive acts or practices in violation of New Mexico Stat. § 57-12-1, *et seq.*, and,
 6 accordingly, Plaintiffs and members of the Damages Class seek all relief available under that
 7 statute.

8 162. New York: Qualcomm has engaged in unfair competition or unfair,
 9 unconscionable, or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et*
 10 *seq.* Qualcomm acted in restraint of trade or commerce by affecting, fixing, controlling
 11 and/or maintaining, at artificial and non-competitive levels, the prices at which Relevant
 12 Cellular Devices were sold, distributed or obtained in New York. Because of Qualcomm's
 13 unlawful trade practices in the State of New York, New York class members who indirectly
 14 purchased Relevant Cellular Devices were misled to believe that they were paying a fair price
 15 for Relevant Cellular Devices or the price increases for Relevant Cellular Devices were for
 16 valid business reasons; and similarly situated consumers were potentially affected by
 17 Qualcomm's conduct. Qualcomm knew that its unlawful trade practices with respect to
 18 pricing Relevant Cellular Devices would have an impact on New York consumers and not just
 19 Qualcomm's direct customers. Qualcomm knew that its unlawful trade practices with respect
 20 to its royalties and other encumbrances on Relevant Cellular Devices would have a broad
 21 impact, causing consumer class members who indirectly purchased Relevant Cellular Devices
 22 to be injured by paying more for Relevant Cellular Devices than they would have paid in the
 23 absence of Qualcomm's unlawful trade acts and practices. Qualcomm's conduct described
 24 herein constitutes consumer-oriented deceptive acts or practices within the meaning of N.Y.
 25 Gen. Bus. Law § 349, which resulted in consumer injury and broad adverse impact on the
 26 public at large, and harmed the public interest of New York State in an honest marketplace in
 27 which economic activity is conducted in a competitive manner. Qualcomm's unlawful
 28 conduct had the following effects: (1) Relevant Cellular Devices price competition was

1 restrained, suppressed, and eliminated throughout New York; (2) Relevant Cellular Devices
 2 prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New
 3 York; (3) Plaintiffs and members of the Damages Class were deprived of free and open
 4 competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive,
 5 artificially inflated prices for Relevant Cellular Devices. Qualcomm's illegal conduct
 6 substantially affected New York commerce and consumers, and accordingly Plaintiffs and
 7 members of the Damages Class seek all relief available under N.Y. Gen. Bus. Law § 349(h).

8 163. North Carolina: Qualcomm has engaged in unfair competition or unfair,
 9 unconscionable, or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-
 10 1.1, *et seq.* Qualcomm acted in restraint of trade or commerce by affecting, fixing,
 11 controlling and/or maintaining, at artificial and non-competitive levels, the prices at which
 12 Relevant Cellular Devices were sold, distributed or obtained in North Carolina. Qualcomm's
 13 conduct could not have succeeded absent deceptive conduct by Qualcomm to cover up its
 14 illegal acts. Qualcomm's conduct described herein constitutes consumer-oriented deceptive
 15 acts or practices within the meaning of North Carolina law, which resulted in consumer injury
 16 and broad adverse impact on the public at large, and harmed the public interest of North
 17 Carolina consumers in an honest marketplace in which economic activity is conducted in a
 18 competitive manner. Qualcomm's unlawful conduct had the following effects: (1) Relevant
 19 Cellular Devices price competition was restrained, suppressed, and eliminated throughout
 20 North Carolina; (2) Relevant Cellular Devices prices were raised, fixed, maintained, and
 21 stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of
 22 the Damages Class were deprived of free and open competition; and (4) Plaintiffs and
 23 members of the Damages Class paid supracompetitive, artificially inflated prices for Relevant
 24 Cellular Devices. During the Class Period, Qualcomm's illegal conduct substantially affected
 25 North Carolina commerce and consumers. Plaintiffs and members of the Damages Class seek
 26 actual damages for their injuries caused by these violations in an amount to be determined at
 27 trial and are threatened with further injury. Qualcomm has engaged in unfair competition or
 28 unfair or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*,

1 and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under
 2 that statute.

3 164. Rhode Island: Qualcomm has engaged in unfair competition or unfair,
 4 unconscionable, or deceptive acts or practices in violation of the Rhode Island Unfair Trade
 5 Practice and Consumer Protection Act (R.I. Gen. Laws §§ 6-13.1-1, *et seq.*). Members of this
 6 Damages Class purchased Relevant Cellular Devices for personal, family, or household
 7 purposes. Qualcomm acted in restraint of trade or commerce in a market that includes Rhode
 8 Island, by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive
 9 levels, the prices at which Relevant Cellular Devices were sold, distributed, or obtained in
 10 Rhode Island. Qualcomm's unlawful conduct had the following effects: (1) Relevant Cellular
 11 Devices price competition was restrained, suppressed, and eliminated throughout Rhode
 12 Island; (2) Relevant Cellular Devices prices were raised, fixed, maintained, and stabilized at
 13 artificially high levels throughout Rhode Island; (3) Plaintiffs and members of the Damages
 14 Class were deprived of free and open competition; and (4) Plaintiffs and members of the
 15 Damages Class paid supracompetitive, artificially inflated prices for Relevant Cellular
 16 Devices. As a direct and proximate result of Qualcomm's violations of law, Plaintiffs and
 17 members of the Damages Class suffered an ascertainable loss of money or property as a result
 18 of Qualcomm's use or employment of unconscionable and deceptive commercial practices as
 19 set forth above. That loss was caused by Qualcomm's willful and deceptive conduct, as
 20 described herein. Qualcomm has engaged in unfair competition or unfair or deceptive acts or
 21 practices in violation of Rhode Island Gen. Laws. § 6-13.1-1, *et seq.*, and, accordingly,
 22 Plaintiffs and members of the Damages Class seek all relief available under that statute.

23 165. South Carolina: Qualcomm has engaged in unfair competition or unfair,
 24 unconscionable, or deceptive acts or practices in violation of South Carolina Unfair Trade
 25 Practices Act (S.C. Code Ann. §§ 39-5-10, *et seq.*). Qualcomm's monopolization as
 26 described herein had the following effects: (1) Relevant Cellular Devices price competition
 27 was restrained, suppressed, and eliminated throughout South Carolina; (2) Relevant Cellular
 28 Devices prices were raised, fixed, maintained, and stabilized at artificially high levels

1 throughout South Carolina; (3) Plaintiffs and members of the Damages Class were deprived
 2 of free and open competition; and (4) Plaintiffs and members of the Damages Class paid
 3 supracompetitive, artificially inflated prices for the Relevant Cellular Devices during the
 4 Class Period. Qualcomm's illegal conduct had a substantial effect on South Carolina
 5 commerce during the Class Period. As a direct and proximate result of Qualcomm's unlawful
 6 conduct, Plaintiffs and members of the Damages Class have been injured in their business and
 7 property and are threatened with further injury. Qualcomm has engaged in unfair competition
 8 or unfair or deceptive acts or practices in violation of S.C. Code Ann. §§ 39-5-10, *et seq.*, and,
 9 accordingly, Plaintiffs and the members of the Damages Class seek all relief available under
 10 that statute.

11 166. Vermont: Qualcomm has engaged in unfair competition and/or unfair,
 12 unconscionable, or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*
 13 Qualcomm acted in restraint of trade or commerce in a market that includes Vermont, by
 14 affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the
 15 prices at which Relevant Cellular Devices were sold, distributed, or obtained in Vermont.
 16 Qualcomm's unlawful conduct had the following effects: (1) Relevant Cellular Devices price
 17 competition was restrained, suppressed, and eliminated throughout Vermont; (2) Relevant
 18 Cellular Devices prices were raised, fixed, maintained, and stabilized at artificially high levels
 19 throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free
 20 and open competition; and (4) Plaintiffs and members of the Damages Class paid
 21 supracompetitive, artificially inflated prices for the Relevant Cellular Devices. As a direct
 22 and proximate result of Qualcomm's violations of law, Plaintiffs and members of the
 23 Damages Class suffered an ascertainable loss of money or property. That loss was caused by
 24 Qualcomm's willful and deceptive conduct, as described herein. Qualcomm's misleading
 25 conduct and unconscionable activities constitutes unfair competition and/or unfair or
 26 deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*, and, accordingly,
 27 Plaintiffs and members of the Damages Class seek all relief available under that statute.
 28

1 **SIXTH CLAIM FOR RELIEF**

2 **Unjust Enrichment**

3 167. Plaintiffs repeats the allegations set forth above as if fully set forth herein.

4 168. As a result of its unlawful conduct described above, Defendant Qualcomm has
5 and will continue to be unjustly enriched. Qualcomm has been unjustly enriched by the
6 receipt of, at a minimum, unlawfully inflated prices and unlawful profits related to the
7 Relevant Cellular Devices.

8 169. Qualcomm has benefited from its unlawful acts and it would be inequitable for
9 it to be permitted to retain any of the ill-gotten gains resulting from its unlawful practices
10 during the Class Period.

11 170. Plaintiffs and members of the Damages Class are entitled to the amount of
12 Qualcomm's ill-gotten gains resulting from its unlawful, unjust, and inequitable
13 conduct. Plaintiffs and members of the Damages Class are entitled to the establishment of a
14 constructive trust consisting of all ill-gotten gains from which Plaintiffs and members of the
15 Damages Class may make claims on a pro rata basis.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs demand judgment that:

18 1. The Court determine that this action may be maintained as a class
19 action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct
20 that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of
21 Civil Procedure, be given to each and every member of the Class;

22 2. That the unlawful conduct alleged herein constituted a violation of
23 Sections 2 and 3(b) of the Sherman Act, and the state antitrust and consumer protection laws
24 set forth herein;

25 3. Plaintiffs and members of the Damages Class recover damages, to the
26 maximum extent allowed under such state antitrust and consumer protection laws, and that a
27 joint and several judgment in favor of Plaintiffs and members of the Damages Class be

1 entered against Defendant Qualcomm in an amount to be trebled to the extent such laws
2 permit;

3 4. Plaintiffs and members of the Damages Class recover damages, to the
4 maximum extent allowed by such laws, in the form of restitution and/or disgorgement of
5 profits unlawfully gained from them;

6 5. Defendant, its affiliates, successors, transferees, assignees and other
7 officers, directors, partners, agents and employees thereof, and all other persons acting or
8 claiming to act on their behalf or in concert with them, be permanently enjoined and
9 restrained from in any manner continuing, maintaining or renewing the conduct alleged
10 herein, or from committing any other conduct having a similar purpose or effect, and from
11 adopting or following any practice, plan, program, or device having a similar purpose or
12 effect;

13 6. Plaintiffs and members of the Damages Class be awarded restitution,
14 including disgorgement of profits Defendant obtained as a result of their acts of unfair
15 competition and acts of unjust enrichment;

16 7. Plaintiffs and members of the Classes be awarded pre- and post-
17 judgment interest as provided by law, and that such interest be awarded at the highest legal
18 rate from and after the date of service of this Complaint;

19 8. Plaintiffs and members of the Classes recover their costs of suit,
20 including reasonable attorneys' fees, as provided by law; and

21 9. Plaintiffs and members of the Classes have such other and further relief
22 as the case may require and the Court may deem just and proper.

23 **JURY DEMAND**

24 Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil
25 Procedure, of all issues so triable.

26
27 [Signature follows on next page]

28

1 Dated: February 3, 2017

Respectfully submitted,

2
3 By: /s/ Christopher L. Lebsock

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